



Expert Submission to the Madlanga Commission

Intergovernmental Relations, Cooperative Governance and Criminal Justice System Integrity

Prepared for consideration by the Madlanga Commission

Dr FM Lucky Mathebula

Pretoria, Gauteng

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Trustees: Dr FM Lucky Mathebula (Founding Trustee) Mr T Mahlangu

♦ email: info@justthinc.co.za ♦ [993 Kromdraai Avenue](#), PO Box 38957 Faerie Glen 0043

www.justthinc.co.za

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Expert Submission to the Madlanga Commission on Intergovernmental Relations, Cooperative Governance and Criminal Justice System Integrity

This submission assists the Madlanga Commission in considering the intergovernmental relations implications of the matters arising from the Terms of Reference and Lieutenant General Nhlanhla Mkhwanazi's public statement on 6 July 2025. The submission proceeds from the premise that the allegations before the Commission should not be considered only as alleged criminal acts by identifiable persons, but also as possible symptoms of systemic weakness in the cooperative governance architecture through which policing, intelligence, prosecution, correctional services, the administration of courts and political oversight interact.

1. Executive Summary

This submission assists the Madlanga Commission in considering the intergovernmental relations implications that arise from both the Commission's Terms of Reference and the factual trigger provided by Lieutenant General Nhlanhla Mkhwanazi's public statement of 6 July 2025. The revised submission proceeds from the premise that the allegations before the Commission should not be examined only as alleged criminal acts by identifiable persons, but also as potential indicators of systemic weakness in the cooperative governance architecture through which policing, intelligence, prosecution, correctional services, courts administration, municipal law enforcement and political oversight interact.

The Terms of Reference define an inquiry of exceptional institutional breadth. They require the Commission to inquire into whether criminal syndicates, including drug cartels, have infiltrated or exerted undue influence over SAPS, Crime Intelligence, the Political Killings Task Team, the Johannesburg, Ekurhuleni and Tshwane Metropolitan Police Departments, the NPA, the SSA, Correctional Services, members of the Judiciary and courts administration, and any other institutions within the criminal justice system. They also require scrutiny of the nature, extent, and consequences of such infiltration, including the facilitation of organised crime, manipulation of investigations, corruption of law-enforcement leadership, intimidation or removal of witnesses and protected disclosures, and the adequacy of oversight, legislation, policy, and institutional arrangements.

The inclusion of SAPS alongside major metropolitan police departments makes the inquiry inherently intergovernmental. It foregrounds the constitutional relationship between a single national police service, provincial oversight responsibilities and municipal policing functions located within metropolitan municipalities. The Commission must therefore consider whether

existing cooperative governance forums, joint operational arrangements, information-sharing protocols, and oversight mechanisms can convert warning signs into accountable action. The IGR issue is not simply whether institutions communicated with one another, but whether communication produced recorded decisions, assigned responsibilities, lawful escalation, feedback, oversight verification and consequences where organs of state failed to cooperate in mutual trust and good faith.

The central submission is that criminal justice accountability must be treated as an intergovernmental discipline rather than as a narrow internal-management matter. Accountability must be traceable across the full criminal justice value chain: prevention, intelligence, investigation, docket management, prosecution, adjudication, corrections, oversight and executive responsibility. This requires the Commission to test how responsibility shifts among national command, provincial commissioners, MECs, metro police chiefs, municipal executives, prosecutors, intelligence structures, courts administration, correctional authorities, and oversight bodies. The final report should therefore address both individual culpability and system design, including mandate clarity, secure information governance, protection of witnesses and investigators, oversight escalation, differentiated provincial and metropolitan policing risks, and consequences for action or omission by responsible office-bearers.

A strengthened IGR analysis also requires the Commission to examine the command disjoint that can arise when policy, command, oversight and operational knowledge are distributed across different spheres and institutions. National authorities may control policing policy and command; provincial executives may identify policing needs and exercise oversight without direct command; municipal police services may detect organised-crime risks without full investigative authority; and prosecutors, intelligence institutions, correctional services and courts administration may hold separate pieces of the same systemic risk. Unless these actors' interfaces are enforceable, organised criminal networks can exploit institutional seams, fragmented reporting lines, and circular accountability.

The submission accordingly recommends that the Commission consider a Criminal Justice IGR Accountability Compact as a practical constitutional instrument for closing the accountability loop. Such a compact would not replace the legal mandates of SAPS, metropolitan police departments, provincial community safety structures, the NPA, intelligence institutions, Correctional Services, courts administration or oversight bodies. Rather, it would bind those mandates together through compulsory risk identification, secure escalation, written decision-making, assigned implementation duties, feedback obligations, oversight verification and

consequence management. Its purpose would be to ensure that no institution can invoke jurisdictional limits, divided authority or intergovernmental ambiguity as a reason for failing to act against organised criminal capture.

2. Purpose and Scope of the Submission

This submission identifies the intergovernmental relations matters the Commission should consider when formulating its final findings and recommendations. It does not seek to pronounce on the criminal liability of any individual or institution. Rather, it urges the Commission to ask whether the alleged facts disclose structural weaknesses in mandate clarity, operational coordination, intelligence sharing, executive accountability, oversight and inter-sphere cooperation.

3. Factual Trigger: General Mkhwanazi's 6 July 2025 Statement

General Mkhwanazi's statement provides the factual and institutional trigger for this submission. It frames the challenges faced by the Political Killings Task Team as possible signs of coordinated interference by an alleged criminal syndicate seeking to neutralise investigations that threatened its interests. It records the establishment of the Task Team in 2018 after politically related killings escalated in KwaZulu-Natal and after earlier investigative arrangements were allegedly fragmented, compromised and ineffective. It also records operational achievements, including the investigation of 612 dockets, the arrest and charging of 436 suspects, the recovery of 156 firearms and successful convictions in 106 cases.

The statement further alleges that the Task Team's work was disrupted after it assisted the Gauteng Organised Crime Investigation Unit in uncovering an alleged organised crime syndicate involving politicians, law enforcement officials, prosecutors, members of the judiciary, business interests and drug-cartel networks. It refers to cellphone communications, screenshots, proof-of-payment references, docket movements, ballistic links and related investigative material. These remain allegations requiring lawful testing, but they provide a compelling basis for the Commission to examine whether South Africa's criminal justice institutions can detect, resist, and correct capture across institutional and intergovernmental boundaries.

4. Narrative of the Commission's Terms of Reference

The Commission's Terms of Reference define an inquiry of exceptional institutional breadth. They require the Commission to inquire into, report on, and make findings and recommendations concerning whether criminal syndicates, including drug cartels, have

infiltrated or exerted undue influence over key institutions within South Africa's criminal justice system. The institutions expressly identified include the South African Police Service, including Crime Intelligence and the Political Killings Task Team; the Johannesburg, Ekurhuleni and Tshwane Metropolitan Police Departments; the National Prosecuting Authority; the State Security Agency; members of the Judiciary, including the magistracy and courts administration; the Department of Correctional Services; and any other organs of state within the criminal justice system.

The Terms therefore move beyond a narrow inquiry into isolated acts of misconduct. They direct attention to the nature, extent and consequences of alleged infiltration or influence, including the facilitation of organised crime, suppression or manipulation of investigations, inducement of law-enforcement leadership into corruption or other unlawful conduct, commission of criminal offences, and the intimidation, victimisation or targeted removal of witnesses, potential witnesses, protected disclosers and officials who resist criminal influence. This framing requires the Commission to examine both the conduct of particular actors and the systemic conditions that may have allowed unlawful influence to travel through the criminal justice value chain.

The Terms of Reference also require scrutiny of senior officials in SAPS, the metropolitan police departments, the NPA and the SSA, as well as current or former members of the Judiciary, including the magistracy, who may have aided or abetted criminal activity, failed to act on credible intelligence or internal warnings, or benefited financially or politically from syndicate operations. In addition, the Terms extend the inquiry to any member of the national executive responsible for the criminal justice system who may have been complicit, aided and abetted, participated in the relevant acts, or contributed to them by omission. This places executive responsibility, institutional leadership and high-level omission squarely within the Commission's mandate.

Finally, the Terms require the Commission to assess the effectiveness or failure of oversight mechanisms and the adequacy of current legislation, policies and institutional arrangements in preventing such infiltration. For purposes of this submission, that mandate is crucial. It confirms that the Commission is not confined to determining individual culpability. It must also evaluate whether the legal, institutional, and intergovernmental architecture of the criminal justice system is strong enough to prevent, detect, interrupt, and remedy organised criminal capture across policing, intelligence, prosecution, adjudication, corrections, municipal law enforcement, oversight, and executive authority.

5. Intergovernmental Relations Aspects Emanating from the Terms of Reference

The Terms of Reference raise significant intergovernmental relations questions because the alleged infiltration, corruption and political interference cut across institutions located in different spheres of government and across distinct branches of the criminal justice system. They implicate national policing structures, metropolitan police departments, prosecutorial and intelligence institutions, correctional services, judicial administration and political executive authority. The inquiry therefore concerns not only alleged criminal conduct, but also the integrity of the cooperative governance arrangements through which safety, security and justice functions are coordinated in South Africa.

Including SAPS alongside the Johannesburg, Ekurhuleni and Tshwane Metropolitan Police Departments foregrounds the relationship between national policing authority and municipal policing functions. It requires the Commission to examine whether coordination between SAPS and municipal police services is operationally coherent, legally clear and resistant to capture. It also points to possible weaknesses in cooperative governance between national, provincial and local institutions responsible for crime prevention, investigation, intelligence sharing, public order and law-enforcement support.

The inquiry must therefore consider whether existing intergovernmental forums, joint operational arrangements, information-sharing protocols and oversight mechanisms are adequate to prevent organised criminal influence from moving across institutional boundaries. Because municipal police departments operate within metropolitan municipalities while policing policy and SAPS command remain nationally regulated, the Commission should examine whether accountability lines between municipal executives, police chiefs, provincial oversight structures, and national policing authorities are sufficiently clear.

The involvement of the NPA, SSA, Correctional Services and courts administration raises a broader criminal justice value-chain concern: whether fragmented mandates across departments and institutions create vulnerabilities that organised syndicates can exploit. The reference to members of the national executive responsible for the criminal justice system further highlights the need to test political accountability within the constitutional framework of cooperative government, including whether executive action or omission undermined lawful coordination, oversight or institutional independence.

The effectiveness or failure of oversight mechanisms should therefore be assessed not only within individual institutions, but across the intergovernmental system as a whole. This

includes parliamentary oversight, municipal council oversight, civilian oversight, police oversight bodies and judicial-administrative safeguards. Similarly, the adequacy of current legislation, policies and institutional arrangements should be evaluated against the constitutional principles of cooperative governance, accountability, transparency, legality and the duty of organs of state to cooperate in mutual trust and good faith.

In distilled form, the IGR dimension of the Terms of Reference is whether South Africa's multi-level criminal justice architecture has sufficient legal clarity, institutional coordination and accountability to prevent organised criminal capture. This submission develops that question through the concepts of criminal justice accountability, traceable responsibility and a proposed intergovernmental accountability compact.

6. Constitutional and Statutory Framework

The Commission should situate its analysis in Chapter 3 of the Constitution, which requires all spheres of government and all organs of state to cooperate in mutual trust and good faith, assist and support one another, coordinate their actions, and avoid legal proceedings against one another where cooperative mechanisms are available. Section 195 further requires public administration to be governed by democratic values, including accountability, transparency, efficient use of resources, responsiveness and professional ethics. Section 205 provides the constitutional foundation for policing and situates police service functions within a framework of public safety, crime prevention and law enforcement.

For present purposes, Chapter 3 is not merely procedural. It is a constitutional discipline for governing across divided mandates. The Constitution recognises national, provincial and local government as distinctive, interdependent and interrelated. This means that no sphere may treat its mandate in isolation, particularly where public safety, policing, prosecution and the administration of justice require coordinated action. The obligation to provide effective, transparent, accountable and coherent government therefore has direct relevance to the Commission's inquiry.

The Commission should accordingly consider whether the alleged interference with the Political Killings Task Team, the alleged movement or withdrawal of dockets, the alleged leaking of confidential information and the alleged pressure placed on investigative structures disclose failures of cooperative governance. The issue is not only whether particular officials acted unlawfully, but whether the institutional system contained adequate safeguards to ensure that organs of state informed one another, consulted on matters of common interest, coordinated their actions, adhered to agreed procedures and protected one another from capture.

In relation to policing, section 205 of the Constitution provides the normative anchor. The police service must prevent, combat, and investigate crime; maintain public order; protect and secure the inhabitants of the Republic and their property; and uphold and enforce the law. Where specialised units such as the Political Killings Task Team are established to respond to serious political violence, any unlawful interference with their work has a constitutional dimension. It may impair the state's ability to discharge its policing obligations and may weaken the public's confidence in the integrity of law enforcement.

The statutory framework is equally important. The Commission should consider the South African Police Service Act; the legislative framework for municipal police services; the Intergovernmental Relations Framework Act; legislation governing the National Prosecuting Authority, intelligence services, and correctional services; and legislation regulating public administration, public finance, municipal governance, protected disclosures, and witness protection. These statutes collectively shape the institutional environment within which the alleged conduct occurred. The Commission must determine whether that environment is sufficiently coherent to prevent criminal infiltration across institutional boundaries.

The Commission should also treat section 195 as a standard of institutional conduct. The allegations of compromised investigations, manipulated dockets, leaks of confidential information and pressure on investigators, if established, would be inconsistent with the constitutional values of professional ethics, accountability, transparency, impartiality, responsiveness and efficient use of public resources. These values are not abstract principles; they are criteria against which the Commission may assess whether public institutions performed their mandates lawfully, ethically and in the public interest.

7. Criminal Justice Accountability as a Conceptual Frame

The Commission should introduce criminal justice accountability as a distinct conceptual frame. Criminal justice accountability refers to the ability of the constitutional and institutional system to identify who had legal authority, who exercised operational control, who received or withheld information, who issued instructions, who failed to act on credible warnings, who benefited from institutional weakness and which oversight body was responsible for intervention. It is concerned not only with after-the-fact blame, but with traceability across the full chain of decision-making, information movement, operational command and oversight response.

This concept is especially important where alleged criminal influence crosses institutional boundaries. If a docket is withdrawn, an investigative unit is weakened, confidential information is leaked, a prosecutor does not act, an intelligence warning is ignored, a municipal

law-enforcement structure is compromised, or an executive authority remains passive despite credible warnings, accountability must not disappear into institutional fragmentation. The Commission should therefore ask whether South Africa's criminal justice architecture makes responsibility visible, auditable and enforceable across national, provincial and local institutions.

A criminal justice accountability approach would require the Commission to trace every material governance failure through five questions: what decision or omission occurred; which institution had the mandate to act; which office-bearer or official had authority; what information was available at the time; and which oversight or escalation mechanism should have responded. This approach links culpability, institutional design and intergovernmental coordination, and provides a method for translating findings into practical reforms.

8. The Criminal Justice System as an Intergovernmental Value Chain

The Commission should approach the criminal justice system as an intergovernmental value chain rather than as a series of isolated institutions. Political killings, organised crime and alleged syndicate infiltration move across institutional seams. Prevention may involve municipal law enforcement, community safety structures and SAPS visibility. Crime Intelligence, local safety networks or other security structures may gather intelligence. Investigation may involve specialised SAPS units, provincial components and municipal police cooperation. Prosecution depends on the NPA. Adjudication involves courts and court administration. Detention, rehabilitation and offender management involve Correctional Services. Witness protection and whistle-blower safety require coordination across several institutions.

This value-chain perspective matters because criminal capture rarely respects administrative boundaries. If a docket is removed from one unit, confidential information leaks from another institution, prosecution is delayed or weakened elsewhere, and investigators are intimidated through separate administrative channels, the cumulative effect may be systemic even when each act appears discrete. The Commission should therefore examine not only individual incidents, but also the connective tissue between institutions: who was required to inform whom, who had authority to intervene, what escalation channels existed, and whether those channels were used, ignored or deliberately bypassed.

The Commission's final report should therefore identify the points in the value chain at which vulnerability to organised criminal influence is greatest. These may include the registration and allocation of dockets, the classification of cases, the transfer of files between units, the sharing of intelligence, the authorisation or withdrawal of specialised investigative capacity, the

protection of witnesses, the management of disciplinary processes and the reporting of executive instructions. Each of these points should be assessed for legal clarity, auditability, independence, transparency and resilience against political or criminal pressure.

9. National, Provincial and Municipal Policing Interface

The national, provincial and municipal policing interface should be one of the central concerns of the Commission's final report. The Terms of Reference expressly refer to SAPS and to the Johannesburg, Ekurhuleni and Tshwane Metropolitan Police Departments. This requires the Commission to consider how national policing authority, provincial oversight and municipal policing functions interact when organised crime crosses geographic and institutional boundaries.

Metropolitan police departments operate within municipalities, but their work intersects continuously with SAPS in crime prevention, visible policing, public order, by-law enforcement, traffic policing, intelligence-sensitive operations, and joint law-enforcement initiatives. Where syndicates allegedly involve politicians, law enforcement officials, prosecutors, judicial actors, and business interests, criminal networks risk exploiting gaps between these institutions. The Commission should therefore examine whether existing arrangements provide clear lines of command, reliable reporting duties, secure information-sharing protocols, and accountable joint operations.

The question is not whether municipal police departments should perform the same functions as SAPS. Rather, the question is whether the relationship between SAPS and municipal police services is sufficiently structured to prevent fragmented accountability. The Commission should consider whether metro police chiefs, municipal managers, mayors or mayoral committees, provincial community safety departments, provincial commissioners and national police leadership have clear obligations to share information, escalate threats, protect investigations and prevent interference where criminal syndicates are suspected of operating across municipal and provincial boundaries.

10. MECs, Provincial Commissioners and the Command Disjoint in Policing

The Commission should expressly consider the role of Members of the Executive Council responsible for policing, community safety or community security in the provincial policing system. MECs do not command SAPS operations, but they occupy a constitutionally significant oversight and coordination position. Through provincial executives, community safety departments, provincial policing needs and priorities, monitoring of police conduct, community-safety programmes and engagement with provincial commissioners, MECs are

expected to translate provincial safety conditions into accountable policing priorities. Their role is therefore neither merely political nor merely ceremonial. It is an IGR bridge between national policing authority and provincial crime realities.

This role must be read together with the constitutional appointment architecture for provincial commissioners. The Constitution provides that the National Commissioner, with the concurrence of the provincial executive, appoints the provincial commissioner; where agreement cannot be reached, the Cabinet member responsible for policing must mediate between the National Commissioner and the provincial executive. The South African Police Service Act gives statutory effect to this arrangement by providing for a provincial commissioner in each province appointed by the National Commissioner subject to the constitutional scheme. This joint appointment model reflects the hybrid nature of policing governance: command remains within a single national police service, but provincial executives have a constitutional interest in who leads policing in their province.

The resulting command architecture is inherently vulnerable to disjoint. Nationally, the Minister sets policing policy, and the National Commissioner commands SAPS. Provincially, the MEC and provincial executive determine policing needs and priorities, exercise oversight and participate in the appointment architecture for the provincial commissioner. Operationally, the provincial commissioner commands provincial SAPS structures subject to national command. Locally, municipalities may establish metropolitan police departments, whose functions include traffic policing, by-law enforcement and crime-prevention support. At the same time, their political and administrative accountability runs through municipal councils, mayors, municipal managers and metro police chiefs. The consequence is a multi-level policing system in which responsibility for policy, command, oversight, intelligence, local enforcement and political accountability does not sit in one place.

This disjoint becomes an IGR inefficiency when each level assumes that another level holds the operative responsibility. National command may treat provincial concerns as local operational matters; provincial executives may lack direct authority to correct operational weaknesses despite being politically accountable for community safety; provincial commissioners may receive national instructions while also facing provincial expectations; and municipal police services may encounter organised-crime risk but lack investigative authority or secure escalation channels into SAPS and prosecutorial structures. In such circumstances, accountability can become circular: national actors invoke provincial implementation, provincial actors invoke national command, and municipal actors invoke the limited scope of municipal policing functions.

The Commission should therefore assess not only whether each institution had a lawful mandate, but whether the interfaces between them worked. In practice, IGR inefficiency may appear as delayed escalation of provincial warnings, weak feedback from national command to MECs, unclear reporting from provincial commissioners to provincial executives on systemic risk, absence of joint risk registers, inadequate municipal-to-SAPS escalation protocols, fragmented oversight between provincial legislatures and municipal councils, and inconsistent participation by policing actors in intergovernmental forums. These are not technical inconveniences. They may create precisely the institutional gaps through which organised criminal networks move, because capture thrives where responsibility is dispersed, information is hoarded, and no authority is required to close the loop.

A useful test for the Commission would be to ask, in every material policing failure, whether the MEC knew or ought reasonably to have known of the risk; whether the provincial commissioner recorded and escalated the risk; whether the National Commissioner or national command responded; whether the municipal policing structure, where implicated, had an escalation duty; and whether any intergovernmental forum converted the warning into an auditable decision. If any link in that chain is absent, the problem is not only individual omission. It is an IGR design failure that allows operational risk to fall between national command, provincial oversight and municipal enforcement.

The accountability problem is therefore not simply that mandates are divided. Constitutional policing governance deliberately divides authority across national command, provincial oversight and municipal policing functions. The constitutional failure arises when enforceable interface duties do not accompany this division. National command must remain answerable for policing policy, operational integrity and SAPS discipline; provincial executives and MECs must be answerable for translating provincial policing needs into oversight, escalation and follow-through; provincial commissioners must be answerable for recording, communicating and acting on provincial policing risks within the national chain of command; and municipal executives, councils and metro police chiefs must be answerable for municipal policing integrity, lawful escalation and cooperation with SAPS where local enforcement encounters organised-crime risk.

A strengthened accountability model should require each sphere to answer three questions: what it knew, what it could lawfully do, and what it actually did. National authorities should not be able to invoke provincial implementation as a reason for inaction where national command or policy intervention was required. Provincial authorities should not be able to invoke the absence of direct SAPS command as a reason for silence where oversight,

monitoring or escalation was required. Municipal authorities should not be able to invoke limited municipal-policing powers as a reason for failing to report, preserve evidence, protect staff or escalate organised-crime risks. Accountability must therefore be relational: each sphere is judged not only by its own mandate, but by whether it activated the correct intergovernmental link when its mandate was insufficient to resolve the risk alone.

This approach would transform IGR from a consultative practice into an accountability discipline. The critical measure is not whether meetings occurred, but whether warnings were converted into written decisions, whether decisions were assigned to responsible offices, whether responsible offices reported back, and whether failure triggered consequence management. In this sense, the national–provincial–municipal policing interface should be assessed through a closure-of-the-loop test: risk identification, lawful escalation, recorded decision, implementation, feedback, oversight verification and consequences for non-compliance.

Mapping IGR Inefficiencies to Reform Recommendations

IGR inefficiency	Accountability risk	Reform recommendation	Accountability output
National command treats provincial warnings as local operational matters.	Provincial risks may remain unresolved despite requiring national command, policy or disciplinary intervention.	Create mandatory national-response duties for escalated provincial policing risks, including prescribed response periods and written reasons where intervention is declined.	National response record, decision notice and follow-up report to the MEC, provincial commissioner and relevant oversight body.
Provincial executives lack direct SAPS command but remain politically accountable for community safety.	MECs may become passive observers when they should monitor, escalate and insist on feedback.	Clarify MEC oversight duties through a provincial policing-risk protocol that requires risk registers, escalation notices and feedback	Provincial policing-risk register, MEC escalation note and written feedback record.

		from provincial commissioners and national command.	
Provincial commissioners face national command duties and provincial oversight expectations.	Command ambiguity may allow delay, selective reporting or blame-shifting between national and provincial actors.	Introduce dual-interface reporting rules requiring provincial commissioners to record high-risk matters, notify national command and brief MECs within legally defined limits.	Provincial commissioner risk brief, national command notification and oversight-safe MEC briefing record.
Municipal police services encounter organised-crime risks but lack full investigative authority.	Metro police may detect warning signs without a secure or compulsory pathway into SAPS, prosecution or provincial oversight systems.	Create municipal-to-SAPS escalation protocols for organised-crime indicators, with municipal council notification and provincial community safety oversight.	Municipal risk referral, SAPS acknowledgement, council oversight note and provincial follow-up record.
Oversight is split between Parliament, provincial legislatures and municipal councils.	Each oversight body may see only part of the pattern and fail to identify systemic capture.	Establish a coordinated oversight escalation mechanism for criminal justice capture risks, with cross-referrals, systemic-risk summaries and implementation tracking.	Joint oversight referral log, systemic-risk tracker and quarterly implementation report.

Intergovernmental forums meet but do not produce enforceable decisions.	Warnings may be discussed but not converted into assigned actions, deadlines or consequence pathways.	Require IGR forums handling policing risks to issue decision registers identifying responsible offices, timeframes, follow-up duties and escalation consequences.	Decision register, action tracker and non-compliance escalation record.
Information is hoarded or shared informally across policing actors.	Sensitive warnings, intelligence and docket-related information may be lost, leaked or selectively disclosed.	Adopt role-based information-sharing protocols with access logs, classification rules, breach reporting and minimum escalation information for each sphere.	Access register, dissemination record, breach report and authorised escalation summary.
Accountability becomes circular between national, provincial and municipal actors.	Every institution can claim partial responsibility while no institution closes the loop.	Adopt a closure-of-the-loop accountability test requiring proof of risk identification, escalation, decision, implementation, feedback and consequence management.	Closed-loop accountability file for each high-risk policing matter.

11. Provincial Oversight and Coordination

Provincial oversight occupies an important constitutional and institutional space between national policing authority and local safety concerns. The Commission should consider whether provincial governments, provincial legislatures, and provincial community safety departments possessed, or should have possessed, sufficient information to identify risks to the

Political Killings Task Team, organised crime investigations, and inter-institutional cooperation. It should also consider whether provincial oversight mechanisms had effective channels to escalate concerns to national authorities, Parliament, oversight bodies or prosecutorial institutions.

The Commission should also consider provincial oversight through the constitutional principle of subsidiarity: matters should be handled at the level closest to the policing need, but only where that level has the legal authority, institutional capability and accountability safeguards to act effectively. In policing, subsidiarity does not mean an unqualified transfer of SAPS powers to provinces. It means that local and provincial knowledge of crime patterns, political violence, community safety risks and institutional vulnerability must inform national policing policy and operational prioritisation. Section 206 of the Constitution already recognises this principle by requiring national policing policy to take account of provincially determined policing needs and priorities, and by permitting differentiated policies for different provinces where provincial conditions justify such differentiation.

The Commission should therefore examine the case for asymmetrical allocation of policing-related powers, responsibilities and oversight capabilities to provinces. Provincial exposure to organised crime, political killings, urban violence, border vulnerabilities, gang activity, illicit economies or institutional capture is not uniform. A province facing acute political-killing risks or entrenched organised-crime infiltration may require stronger investigative-support mechanisms, specialised provincial safety intelligence interfaces, compulsory escalation duties and more robust civilian oversight capacity than a province facing different policing pressures. Asymmetry should not be treated as fragmentation. Properly designed, it would allow differentiated provincial policing arrangements within a single national policing service, subject to uniform constitutional standards, national command integrity, clear legal mandates and stringent safeguards against provincial-level capture.

This point is critical because decentralisation inside SAPS can be both a corrective and a vulnerability. Decentralised command, provincial operational discretion and locally embedded policing can improve responsiveness, knowledge of local criminal ecosystems and early detection of political violence. Yet the same decentralisation may create permissive conditions for capture, where provincial commanders, specialised units, station-level docket systems, intelligence handlers, or municipal policing partners become dependent on local political patrons, business interests, or criminal networks. The Commission should accordingly ask whether SAPS decentralisation has been accompanied by adequate audit trails, cross-provincial checks, national intervention triggers, rotation and integrity controls, protected reporting

channels and independent oversight escalation. Without these safeguards, decentralisation may make capture easier to localise, conceal and reproduce.

The capture risk is therefore not merely that corrupt individuals may occupy decentralised posts. It is that decentralised authority can create multiple access points through which organised criminal networks may influence decisions without capturing the whole national institution at once. A syndicate may seek to control docket allocation at station level, cultivate relationships with provincial commanders, compromise intelligence handlers, influence municipal enforcement decisions, manipulate disciplinary processes, or obtain advance knowledge of planned operations. These forms of capture are especially dangerous because they may appear as routine administrative decisions: a docket is transferred, an investigator is reassigned, a raid is postponed, a warning is not escalated, a disciplinary matter is delayed, or a municipal enforcement operation is redirected. The Commission should treat such apparently ordinary decisions as potential capture signals when they occur repeatedly, benefit the same interests, or weaken investigations into politically connected or organised-crime actors.

A stronger capture-risk framework should distinguish between capture by command, capture by information, capture by procedure and capture by omission. Capture by command occurs where lawful authority is used, or purportedly used, to redirect investigations, weaken specialised units or insulate implicated persons. Capture by information occurs when sensitive intelligence, docket material, ballistic links, cellphone evidence, or witness information is leaked, suppressed, or selectively shared. Capture by procedure occurs where ordinary rules on transfers, procurement, discipline, case allocation, access control or reporting are manipulated to produce unlawful outcomes while retaining an appearance of legality. Capture by omission occurs where credible warnings are ignored, not escalated, or allowed to lapse until the operational opportunity to intervene has passed. These categories would help the Commission move beyond general language about corruption and identify the precise institutional mechanisms through which capture may become embedded.

The decentralisation of SAPS must also be assessed against the political economy of localised power. Provincial and local policing environments are not neutral administrative spaces. Tender networks, taxi and transport economies, land-use disputes, border and corridor economies, nightlife markets, private security interests, political factionalism, and illicit revenue streams may shape them. Where local criminal economies are profitable and politically connected, decentralised discretion over deployment, docket flow, intelligence handling and enforcement priorities can become a strategic resource. The closer a policing function is to these localised economies, the more important it becomes to build countervailing controls: independent audit,

rotation of sensitive personnel, conflict-of-interest declarations, protected reporting channels, national intervention triggers and cross-provincial review of high-risk decisions.

12. Executive Accountability Across Spheres of Government

The Commission must examine executive accountability across spheres of government. The Terms of Reference refer expressly to members of the national executive responsible for the criminal justice system, including circumstances where responsibility may arise through action or omission. The Commission should consider whether ministers, deputy ministers, premiers, MECs, mayors, municipal executive authorities and senior accounting officers had duties to act once credible warnings of criminal infiltration, investigatory sabotage or institutional pressure became known to them. It should also consider whether current reporting arrangements make it possible to identify responsibility when unlawful influence travels through administrative channels rather than through formal policy decisions.

Executive accountability should also be examined in relation to decentralised policing authority. Where operational discretion is exercised at the provincial, district, station, or municipal interface, executive actors must not be permitted to hide behind decentralisation when warning signs of capture emerge. Conversely, national authority must not use centralisation to ignore differentiated provincial risks. A constitutionally sound approach would require executive responsibility to be traceable across both directions: upward, where provincial and local institutions must escalate capture risks; and downward, where national policy and command structures must respond to provincial policing needs, priorities and warnings.

13. Intelligence Sharing and Information Governance

Information governance is central to the allegations. The statement summarised in the document refers to cellphone communications, docket movements, confidential information leaks, proof-of-payment references, ballistic links and investigative materials. The Commission should therefore examine whether lawful, secure, and auditable protocols existed for sharing sensitive information between SAPS units, Crime Intelligence, municipal police services, prosecutorial authorities, intelligence structures, and oversight bodies. It should also examine whether information was withheld, selectively disclosed, manipulated or leaked in ways that undermined investigations or exposed witnesses and investigators to risk.

14. Oversight Architecture and Accountability Gaps

The Commission should assess whether South Africa's oversight institutions operate as a coherent accountability architecture or as fragmented silos. The relevant oversight ecosystem

includes Parliament, provincial legislatures, municipal councils, civilian oversight bodies, IPID, internal disciplinary systems, prosecutorial accountability mechanisms, judicial-administrative safeguards, audit institutions and public finance oversight bodies. Where organised criminal influence allegedly crosses policing, prosecution, intelligence, political and municipal boundaries, isolated oversight may be insufficient. The Commission should therefore consider whether existing oversight bodies exchange information, coordinate investigations, avoid duplication and escalate systemic risks promptly.

The concept of criminal justice accountability should therefore be applied to the oversight architecture itself. The Commission should ask which oversight body had jurisdiction, what trigger should have activated that jurisdiction, what information should have been shared, what response was required and whether the failure to respond was caused by legal uncertainty, institutional incapacity, political pressure or deliberate omission. Accountability should be traceable not only within operational institutions, but also within the bodies responsible for supervising them.

The Commission should further ask whether oversight bodies are structurally equipped to identify capture patterns rather than isolated incidents. Capture often becomes visible only when weak signals are connected across institutions: a disciplinary delay in one place, an unexplained docket transfer in another, an intelligence leak elsewhere, and a municipal enforcement anomaly in a related area. If oversight institutions examine each signal separately, the systemic pattern may remain invisible. Oversight architecture should therefore include a mechanism for pattern detection, cross-referral, confidential information pooling and escalation where separate accountability bodies encounter indicators pointing to the same network, geography, officials or economic interests.

15. Legislative and Institutional Adequacy

The Commission should treat legislative and institutional adequacy as one of the central questions arising from the Terms of Reference. The issue is not simply whether individual officials allegedly acted unlawfully, but whether the current legal and institutional framework contains sufficient safeguards to prevent organised criminal infiltration, detect early warning signs, protect investigations, secure intelligence, shield whistle-blowers and witnesses, and trigger timely intergovernmental escalation when institutional capture is suspected.

The allegations summarised in General Mkhwanazi's statement reveal several institutional stress points that the Commission should examine. These include the alleged withdrawal or movement of dockets, apparent attempts to disband or neutralise specialised investigative capacity, alleged leaks of confidential information, possible interference in investigators' work,

and alleged coordination between criminal networks and actors in different institutions. If established, these facts would suggest that criminal syndicates may exploit weaknesses in the rules governing mandate allocation, docket control, operational command, information security and accountability across the criminal justice value chain.

First, the Commission should consider whether the legal framework governing specialised investigative units is sufficiently clear. Where a unit such as the Political Killings Task Team has been established to respond to political violence and organised criminality, the law and applicable directives should clearly regulate its establishment, mandate, reporting lines, operational independence, criteria for the transfer of dockets, and conditions under which its work may be restructured, suspended or terminated. No administrative instruction should weaken such a unit without written reasons, lawful authority, proper consultation, and an auditable record.

Second, the Commission should assess whether existing law adequately regulates the interface between SAPS and metropolitan police departments. The Terms of Reference expressly implicate JMPD, EMPD and TMPD alongside SAPS. This makes it necessary to test whether the statutory and policy framework provides clear rules for joint operations, crime intelligence support, information sharing, operational deconfliction, command responsibility and escalation where municipal law enforcement structures encounter organised crime risks that exceed ordinary municipal policing functions.

Third, the Commission should examine the adequacy of intelligence governance. Allegations concerning leaks, cellphone communications, docket movements and the disclosure of confidential information point to the need for secure, lawful and auditable information systems. The final report should consider whether current protocols adequately govern who may access sensitive information, how access is recorded, how information is shared between institutions, and what consequences follow where confidential operational material is disclosed to unauthorised persons or suspected criminal actors.

Fourth, the Commission should consider whether whistle-blower and witness protection mechanisms are adequate in cases involving political violence, organised crime and alleged criminal justice capture. Where investigators, witnesses, potential witnesses or officials resisting unlawful influence face intimidation, victimisation or targeted removal, the institutional response cannot depend only on ordinary internal reporting channels. The Commission should recommend stronger protected disclosure, witness protection, and investigator-protection mechanisms that can operate across SAPS, municipal police services, prosecutorial authorities, and oversight bodies.

Fifth, the Commission should consider whether the underlying laws and institutional mandates create a clear pathway for escalating credible allegations of criminal infiltration. This question should be treated as a matter of legal design, while the operational performance of oversight bodies is addressed separately in the preceding oversight section.

The Commission should therefore recommend that government undertake a targeted legislative and institutional review focused on three questions: whether mandates are sufficiently clear; whether coordination duties are enforceable; and whether accountability mechanisms are strong enough to prevent powerful actors from using institutional fragmentation as a shield. Such a review should include the legal framework governing specialised investigative units, municipal police services, criminal intelligence, docket management, executive instructions, protected disclosures, witness protection, intergovernmental forums and oversight escalation.

The legislative review should also test whether existing law is adequate to regulate cumulative capture risk. Many legal frameworks respond to discrete misconduct after it occurs, while organised capture often advances through incremental, procedurally disguised, cross-institutional decisions. The Commission should therefore recommend legal and policy mechanisms that require early-warning aggregation, systemic-risk reporting, protection of sensitive operational posts, mandatory recording of high-risk decisions, and consequences for failing to escalate credible warnings. The objective should be to make capture harder to initiate, harder to conceal and easier to interrupt before investigations are irreversibly compromised.

16. Organised Crime, Urban Governance and Metropolitan Vulnerability

Because the Terms of Reference identify Johannesburg, Ekurhuleni and Tshwane, the Commission should give specific attention to the vulnerability of metropolitan municipalities to organised criminal influence. Metropolitan spaces concentrate transport corridors, informal and formal economies, licensing systems, land-use decisions, policing demands, nightlife economies, procurement opportunities and political contestation. These features create points of contact between criminal networks, municipal law enforcement, political actors, private security interests and state institutions.

The Commission should therefore consider whether metropolitan police departments have sufficient internal controls, intelligence interfaces, disciplinary systems and political-accountability arrangements to resist organised criminal pressure. It should also examine whether municipal executives and councils receive credible, timely and actionable information when criminal syndicates penetrate municipal policing, licensing, procurement or enforcement systems. The final report should recognise that organised crime in metropolitan areas is not only a policing problem; it is also an urban governance problem.

17. Institutional Culture, Ethics and Professionalisation

The Commission should consider institutional culture, ethics and professionalisation as central safeguards against capture. Institutions become vulnerable when appointment systems are politicised, disciplinary processes are selectively applied, intelligence is personalised, investigators are isolated, and professional norms are subordinated to factional or criminal interests. A capable criminal justice system requires officials who understand not only their technical mandates, but also their constitutional duties to legality, impartiality, accountability and public service.

The final report should therefore recommend integrity measures across the criminal justice value chain, including transparent appointment standards, integrity testing, lifestyle audits where legally permissible, protection for investigators and officials who resist unlawful influence, mandatory reporting of improper instructions, and training on cooperative governance, information security and ethical decision-making. Professionalisation should be treated as both a human-resource concern and a constitutional safeguard.

18. Proposed Findings for the Commission's Consideration

The Commission may wish to consider making findings that organised criminal infiltration, if established, represents not only a set of individual offences but also a systemic governance risk. It may further find that fragmentation between SAPS, specialised investigative units, municipal police departments, intelligence structures, prosecutorial authorities, correctional services, courts administration and political oversight creates opportunities for unlawful influence to move through the criminal justice system without timely detection or coordinated response.

The Commission may also find that oversight mechanisms should be assessed across the system rather than within individual institutions only. Where police, prosecutors, intelligence actors, municipal law enforcement structures and political office-bearers are implicated in the same alleged network, conventional silo-based oversight may be inadequate. The Commission should therefore consider findings on the need for clearer mandate allocation, enforceable coordination duties, auditable docket and intelligence systems, and stronger protection for witnesses, whistle-blowers and investigators.

The Commission may also find that the role of MECs and provincial commissioners reveals a structural command-disjoint in policing. MECs and provincial executives carry constitutional oversight and provincial-priority responsibilities. In contrast, provincial commissioners operate within the command of the national police service, and municipal police services remain accountable to municipal structures. This architecture can improve responsiveness only if the

interfaces are clear, auditable and enforceable. Where they are not, national, provincial and municipal actors may each possess partial knowledge, partial authority and partial accountability, producing IGR inefficiency and creating space for capture, delay or blame-shifting.

The Commission may further find that subsidiarity and decentralisation require careful constitutional design in the policing sphere. Provincial proximity to crime patterns and community safety risks is indispensable. Still, decentralised SAPS authority can become a pathway for capture if secure information systems, auditable command decisions, national backstopping, differentiated oversight capacity and clear escalation duties do not match provincial and local discretion. The final report should therefore distinguish between constructive asymmetry, which tailors policing arrangements to provincial needs within a national framework, and dangerous fragmentation, which lets criminal networks exploit uneven capacity, weak oversight, or localised political influence.

The Commission may further find that capture in the criminal justice system is most likely to succeed where three conditions coincide: discretionary authority over sensitive decisions, weak auditability of those decisions, and absence of an independent escalation pathway. This means that reforms should not focus only on identifying compromised individuals after the fact. They should also reduce unrecorded discretionary decisions, require reasons for sensitive operational changes, secure information access, protect officials who resist improper instructions, and create early-warning mechanisms capable of detecting patterns across SAPS, municipal police services, intelligence structures, prosecution, corrections, and oversight bodies.

19. Proposed Recommendations for the Final Report

1. The Commission should recommend a targeted legislative and policy review of specialised investigative units, including the conditions under which such units may be established, supported, restructured, transferred or disbanded.
2. The Commission should recommend a binding Criminal Justice IGR Accountability Compact governing cooperation between SAPS, metropolitan police departments, provincial community safety structures, the NPA, intelligence bodies, correctional services and relevant oversight institutions in matters involving organised crime, political violence and suspected institutional capture.
3. The Commission should recommend a review of asymmetrical provincial policing-support and oversight arrangements, enabling differentiated responses to provincial policing needs and priorities while maintaining national command integrity, uniform constitutional standards and safeguards against provincial or local capture.

4. The Commission should recommend a capture-risk diagnostic framework for the criminal justice system, distinguishing capture by command, capture by information, capture by procedure and capture by omission, with mandatory early-warning aggregation and escalation where multiple weak signals point to the same network, geography, officials or economic interests.
5. The Commission should recommend a statutory or policy clarification of the accountability interface among MECs responsible for policing, provincial commissioners, the National Commissioner and municipal police leadership, including mandatory escalation, feedback and written decision records where provincial or municipal policing risks indicate organised crime, political violence or institutional capture.
6. The Commission should recommend a closure-of-the-loop accountability test for high-risk policing matters, requiring documentary proof of risk identification, escalation, decision, implementation, feedback, oversight verification and consequence management across national, provincial and municipal institutions.
7. The Commission should recommend secure and auditable systems for docket management, intelligence access, information sharing and investigative decision-making, including mandatory reasons for docket transfers and access to sensitive information.
8. The Commission should recommend strengthened protection mechanisms for whistle-blowers, witnesses, investigators and officials who resist unlawful instructions or criminal influence.
9. The Commission should recommend a coordinated oversight escalation mechanism linking Parliament, provincial legislatures, municipal councils, civilian oversight bodies, IPID, prosecutorial accountability structures, audit institutions and other relevant accountability bodies.
10. The Commission should recommend periodic intergovernmental reporting on implementation, with clear responsibility assigned to national departments, provincial executives, metropolitan municipalities, oversight bodies and the Presidency where coordination across portfolios is required.

20. Implementation Framework

Implementation should be organised in phases. In the short term, the Commission should recommend immediately protecting sensitive dockets, preserving investigative records, safeguarding witnesses and investigators, and requiring affected institutions to report in writing on steps taken to prevent further interference. In the medium term, government should develop

the intergovernmental protocol, review the mandates of specialised units, strengthen information-security rules and formalise oversight escalation channels.

In the long term, Parliament, Cabinet, provincial executives, organised local government and metropolitan municipalities should monitor implementation through regular public reporting. The Presidency may play a coordinating role where reforms cut across policing, justice, intelligence, cooperative governance and local government. The Criminal Justice IGR Accountability Compact should become the practical instrument through which responsibilities, timelines, reporting duties and consequences for non-compliance are made visible and enforceable.

21. Conclusion

The Commission faces allegations that, if established, go to the integrity of the criminal justice system and the constitutional promise of cooperative government. The matters raised by the Terms of Reference and by General Mkhwanazi's statement should therefore not be understood only as allegations of individual criminality, corruption or misconduct. They should also be understood as a test of whether South Africa's intergovernmental criminal justice architecture is sufficiently coherent, ethical and accountable to resist organised criminal capture.

The central submission is that the final report should address both culpability and system design. It should ask who acted unlawfully, but also whether the system made such conduct easier to commit, conceal or sustain. The Commission's enduring contribution would be to recommend reforms that strengthen mandate clarity, institutional coordination, intelligence integrity, oversight escalation, executive accountability and the protection of those who defend the rule of law from within the state. A Criminal Justice IGR Accountability Compact would give practical form to that contribution by making responsibility traceable across the full criminal justice value chain.

22. Annexures

1. Annexure A: Criminal Justice Accountability Traceability Matrix.
2. Annexure B: Constitutional and Statutory Provisions Relevant to Intergovernmental Criminal Justice Accountability.
3. Annexure C: Criminal Justice Intergovernmental Value Chain.
4. Annexure D: Draft Intergovernmental Criminal Justice Coordination Protocol.
5. Annexure E: Institutional Matrix.
6. Annexure F: Draft Criminal Justice IGR Accountability Compact and Implementation Matrix.

7. Annexure G: Terms of Reference of the Commission.
8. Annexure H: Distilled Intergovernmental Relations Aspects of the Terms of Reference.