

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

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DAY 189

20

PROCEEDINGS RESUME ON 18 NOVEMBER 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS: Morning Chair.

CHAIRPERSON: Are we ready?

ADV PRETORIUS: Yes we are.

CHAIRPERSON: Yes.

ADV PRETORIUS: Chair the witness set down for today is Lord Peter Hain. If I may just make a few introductory remarks before he takes the affirmation?

10 **CHAIRPERSON**: Yes.

ADV PRETORIUS: He is a member of the House of Lords in the United Kingdom and he will testify by way of introduction to his evidence of his origins and his relationship to South Africa and his interest in South Africa. His special focus for present purposes is the manner in which domestic corruption is facilitated on the international stage by international actors particularly in the enabling of money laundering. And for present purposes that is the expatriation and concealment of the monetary fruits of corruption.

20 It is important to emphasise from a procedural point of view Chair that although Lord Hain in his developing thesis in his remarks today relies largely on information in the public domain as contained in the bundles before you.

Notices in terms of Rule 3.3 have been issued as a precautionary measure to parties implicated even those in foreign jurisdictions. There have been some responses and they will be dealt

with in evidence.

Much of the factual evidence as I have said relied upon by Lord Hain is already in the public domain or has been related to him as he will testify.

The category of evidence dealt with is dealt with by the investigations in the commission by what we have termed the Money Flows team. That evidence is still to be led. So that by the time you are in a position to assess the evidence and the conclusions and the recommendations put before you by Lord Hain you will be able to base
10 that on direct evidence that will by then have been placed before you. Perhaps in even more detail as than alluded to by Lord Hain at the moment.

Chair if I may just hand up two more bundles? One is a bundle of the Rule 3.3 Notices and correspondence emanating from those Rule 3.3 Notices and it may be that we can deal with all the responses in evidence to avoid later difficulties.

The other is a small bundle of explanatory notes dealing with certain concepts and dealing with certain institutions that will be referred to by Lord Hain in evidence. That by way of introduction Chair
20 may Lord Hain take the affirmation?

CHAIRPERSON: Thank you please administer the affirmation?

REGISTRAR: Please state your full names for the record?

LORD HAIN: Lord Peter Hain.

REGISTRAR: Do you have any objection in taking the prescribed affirmation?

LORD HAIN: No.

CHAIRPERSON: Do you solemnly affirm that the evidence you will give shall be the truth; the whole truth and nothing but the truth, if so please raise your right hand and say, I truly affirm?

LORD HAIN: I truly affirm.

CHAIRPERSON: Thank you very much Lord Hain. I just want to welcome you and to tell you that we appreciate very much that you have taken your time to come and share evidence with the commission. We appreciate very much that you have made yourself available.

10 **LORD HAIN:** Thank you Chair it is a privilege to be before you.

CHAIRPERSON: Thank you.

ADV PRETORIUS: Lord Hain before you introduce yourself to the Chair by way of introduction as I have noted. Before you; you have two bundles. The large bundles. Those bundles are bundle QQa and QQb. They contain your statement and annexures to your statement as referred to in the footnotes to your statement.

20 There are also two further bundles that have just – copies of which have just been handed up to the Chair. Those are the notices issued by the Legal Team to various parties implicated or indirectly implicated by you in your testimony and some – ex – those are also in front of you.

Your statement is in bundle QQa.

CHAIRPERSON: Mr Pretorius should we not admit these first before you start?

ADV PRETORIUS: Yes please Chair.

CHAIRPERSON: With questions – your questions. The lever arch file containing a statement or submission by Lord Peter Hain and annexures thereto will be marked Exhibit QQa and the other one which consists of further annexures to his statement will be marked Exhibit QQb. Do you want me to also admit these or?

ADV PRETORIUS: Perhaps we should for the sake of completeness Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS: We can call them QQc and d respectively. The one
10 containing the notices, the small lever arch file may that be QQc and then the – the plastic folder may be – perhaps that could be QQd.

CHAIRPERSON: The file containing Rule 3.3 Notices and correspondence will be marked Exhibit QQc and the one that is marked other documents will be marked Exhibit QQd. Thank you.

ADV PRETORIUS: Thank you Chair.

CHAIRPERSON: Hm.

ADV PRETORIUS: Lord Hain briefly would you tell the Chair and importantly the public of your origins in South Africa briefly and your interest in the subject matter of this commission?

20 **LORD HAIN:** Chair my parents were both born in South Africa. My father in Durban, my mother in Port Alfred. I spent my entire childhood here, mostly in Pretoria until my parents were first jailed in the anti-apartheid struggle in 1961 when I was 11 years old. Then my mother was banned. Then my father was banned. My mother in 1963, my father in 1964 and finally we forced into exile in 1966 when I was age

16 because they stopped my father working as an architect.

A few years later I then joined the anti-apartheid struggle in Britain and led campaigns to stop all white Springbok tours because they were all white at that stage as part of the British anti-apartheid movements campaign drive.

I received a letter bomb from the South African Security Services in June 1972 as a result of that and also was put on trial for conspiracy in a South African finance prosecution and then I was victim of a mistaken identity charge of a bank theft committed by a South African agent. But placed me in a position effectively framed me. I was acquitted of that I am pleased to say.

So I have had a long involvement in the anti-apartheid struggle carrying on my parents work and I have continued since the transformation to support the country chairing the Nelson Mandela Centenary Exhibition in 2018 at the Royal Festival Hall and a number of other supportive activities for South Africa because a lot of my heart is still here.

ADV PRETORIUS: Thank you Lord Hain. At page of your statement you introduce your evidence and the concept State Capture and the source of your knowledge of the phenomenon State Capture. Would you just briefly deal with that?

LORD HAIN: Chair this is part of my 10 000 word written submission which I understand you will publish online. My – my understanding of state capture is that it was facilitated first of all by the massive complicity of international financial and other institutions global

corporates and foreign governments.

But that if you look at what happened whether it was the dismembering of the South African Revenue Service, the way in which the National Prosecuting Authority was turned from pursuing high crime to neglecting a lot of crime. The same was true of the Hawks and other forms of the security and police services. The way in which the state owned enterprises were looted by those who were in control of the country at the time principally under former President Zuma and the different business associates that he had principally the Gupta
 10 brothers. Whether it was Eskom or whether it was South African Airways or Transnet this amounted to a complete comprehensive picture of state capture by corrupt criminality and it is that which I understand to have happened in South Africa and have observed and researched myself.

ADV PRETORIUS: Right. I have already alluded to the fact that when the Chair has to assess the conclusions and recommendations that you make he will be able to the extent possible to rely on direct information before the commission. But your own information I understand is sourced largely from matters within the public domain and matters
 20 referred to by individual let us terms them Whistle-blowers, is that correct?

LORD HAIN: That is correct Chair and I have had the assistance as I mentioned in paragraph 3 of my submission; I have had the assistance of experts in the field. Much greater expertise than I could possibly have of the way the international financial system works and it is them

that I thank for the way that this submission was able to be drafted and then submitted to you.

ADV PRETORIUS: Right. On page 2 of your statement or submission you tell the Chair of how your report is structured in the two parts, the two main parts. Perhaps by way of introduction you could tell the Chair about that at the outset?

LORD HAIN: Well Part 1 Chair is the international actors, the banks, the professional enablers which I will describe. The corporates and then governments, the state.

10 Part 2 is remedial measures. Recommendations that I am making for your consideration in the commission of – for reforms that are needed in the way the banks operate, the way corporate operate and about information sharing, transparency, self-policing and I go through a whole series of recommendations for you to consider.

ADV PRETORIUS: Right. And then on page 3 under the head “Global Picture” you summarise your focus being an international focus. Would you deal with that please?

LORD HAIN: What I describe here is the way the financial crime threatens the prosperity and stability of us all. Individual citizens,
20 governments and communities. And the criminals launder vast sums of illicit funds every year transforming the ill-gotten gains to seemingly legitimate assets. It is estimated Chair that around 5% of global gross domestic product – global wealth or US Dollars 2 Trillion is laundered every – each and every year. This is a huge sum which dwarfs by far the national budgets of countries like South Africa. So this is a

systematic picture of international crime. And often as I think we saw in South Africa the domestic regulatory mechanisms are unable to curb this free flowing money laundering and international crime. And what it does is particularly in developing countries keeps people in abject poverty. So this is not just something done by bankers and experts and financiers with the assistance often of lawyers and accountants and other professional enablers. It is actually robbing people of their national wealth and stopping – and keeping them in complete poverty. So it is – it is a problem that has a direct impact on the questions of social justice and equality which are very live issues in South Africa today.

ADV PRETORIUS: Yes. And you will note there obviously that where you place certain statistics on record as you do in paragraph 5 that it is footnoted to a particular source and this particular source that you have referred to here is a United Nations document.

LORD HAIN: That is correct Chair.

ADV PRETORIUS: [Indistinct] document. Those documents Chair are the documents in the bundle. So the – perhaps it is not necessary to go through all those documents at all.

20 **CHAIRPERSON:** Ja.

ADV PRETORIUS: But they are there for the record.

CHAIRPERSON: They are available ja.

ADV PRETORIUS: Yes.

CHAIRPERSON: Okay.

ADV PRETORIUS: And – so in paragraph 6 you make certain

observations based on that general summary of the global picture.
Would you deal with that please?

LORD HAIN: Yes Chair. This goes to the heart of what I hope will be of value to the commission which is my concern that global action and global cooperation is needed if this problem is to be dealt with and prevented in the future and resolved in respect of the past. Because there needs to be much better global action and coordination from a range of stakeholders from Governments to businesses, to banks and non-governmental organisations. And without this I think that the state
10 capture of South Africa or in another country could happen again and the South African Treasury would not be able to recover the billions that have been looted and laundered abroad or pass ported elsewhere. And this is all being done not sort of by private individuals but with the assistance of the International banking system and that is – and corporates that work alongside them. And that will continue unhindered and undeterred and unless action is taken and that is really my focus for this submission.

ADV PRETORIUS: Right and you refer in paragraph 6 to two aspects in relation to the remedial action that would require to be taken. The first
20 is obviously prevention through cooperation and the second is recovery of monies laundered as a result of corrupt activities. Am I correct?

LORD HAIN: You are correct, you are correct Chair.

ADV PRETORIUS: Then you go on to deal with the South African picture. If you would?

LORD HAIN: I do. In paragraph 7 I assert based on documentation

and a report – a very impressive report by Marianne Merten in the Daily Telegraph sorry in the Daily Maverick – Freudian slip there, that state capture in terms of its direct and indirect costs have been estimated at around R1.5 Trillion prodigious amount. I then describe how there has been a great deal of examination indeed in your own commission Chair of the systematic lack of transparency and accountability of South African bodies that allowed corruption to thrive.

ADV PRETORIUS: If you would just pause there just by way of reference. Chair that amount of R1.5 Trillion which appeared in the
10 article is in the bundle but the particular figures that make up that total appear at page 33 of the bundle.

CHAIRPERSON: Thank you.

LORD HAIN: So Chair my focus is not so much on the domestic changes that are needed in South Africa though I do – I do touch on that. My plea is for the international community to fully acknowledge its own role in this sorry and sordid saga in the way that international actors played a crucial function in the capture of the state. For example it was international actors who helped and continue to help corrupt individuals to enjoy the spoils of their illegality by allowing
20 them to move their ill-gotten gains from South Africa and then sometimes as in the Estina Dairy Farm scandal back into South Africa undetected. This is all through the international financial and banking systems. It could not have happened otherwise and it was not detected. And it was international actors who helped corrupt individuals here in South Africa create complex structures of corporate

structures disguising the true ownership of funds – the true ownership of funds and complicating the tracing of those stolen funds whilst earning fat fees from that looting. It was international actors that have also provided refuge for these corrupt individuals and the mean to continue to pursue their activities through less regulated economies.

ADV PRETORIUS: May we then move to page 5 where you go into some detail in relation to the particular institutions that fall within the category of actors internationally that you have described? But perhaps before we do that it should come from you rather than me the
10 caveat in paragraph 10.

LORD HAIN: Well Chair I just make it clear here that the cases that I have drawn upon and sight are drawn from reports in the public domain and that has been mentioned already this morning and evidence submitted to your own inquiry. And save for where I refer for example in my own interactions with the international banks and relevant international actors I do not claim to have any special personal knowledge of the facts in this regard and I relied on reports and evidence that have been cited in the footnotes that in my submission and on the expert evaluation of the material that I have been able to
20 draw upon.

ADV PRETORIUS: Then you go on to deal with the particular institutions that form the basis of your recommendations in part. You start with the banks on page 5.

LORD HAIN: I do indeed.

ADV PRETORIUS: Paragraph 11 rather.

LORD HAIN: I do indeed and in paragraphs 11 and the following paragraphs I describe how electronic banking remains the simplest and fastest way of transferring funds between people and across borders. And it allows the conventional electronic banking that maybe we all from time to time use legitimately. It allows criminals to move their money from – to more convenient and less regulated jurisdictions and it cleans the money if I can describe it in that way by mingling it with other funds and disguising its true source so that it is easier for them then to spend claiming a legitimate form of spending which clearly by
10 origin it is not. And the Gupta brother used a number of these international banks. Many of them are household names such as HSBC, Standard Chartered, the Bank of Baroda which have all I think been mentioned in your commission's deliberations. And they transfer their money around the network disguised payments to hide the source of the funds and they seem to have really assisted the Gupta's in two main ways. By allowing bank accounts to be opened and in so doing granting access to the bank's global network. So a bank account might be opened in let us say HSBC or Bank of Baroda or Standard Chartered
20 her in Johannesburg and then it goes through their international pipeline into Dubai or Hong Kong or wherever it might be and then disappears. And so they have assisted that and they have also – so they have granted effectively they have been able to grant in the case of the Gupta brothers and others have used this method – they have been granted them an open door to their international network through depositing money in local accounts. And for them to claim and perhaps

Chair we might come back onto this – for them to claim as they have to me and at least one of them has claimed you know in a response to this commission as a result of my submission that they have not responsibility for what happens in Dubai let us say seems to me to be frankly disingenuous because they are an international operations and they should be held accountable for the consequences of accounts in let us say Johannesburg or Pretoria or Cape Town or wherever it might be in South Africa which then have money that is smuggled in the conventional way out of the country into other jurisdictions and into
10 their accounts in other jurisdictions. And I think there were lots of warning signs from the evidence I have seen that this was happening and frankly the banks concerned did not stop it. They allowed it to occur and therefore they are culpable in my view in state capture and are complicit in this corruption and looting. They should have spotted these red flags earlier and dealt with them immediately and I am happy to go into that if you wish me to Chair.

ADV PRETORIUS: Yes. The general remarks Lord Hain that you have made insofar as our evidence thus far shows that they may well be all true of certainly the Bank of Baroda but as far as Standard Chartered
20 Bank and HSBC is concerned they – those remarks may not all apply as far as our investigations go at least to – to those institutions in their totality. So – but perhaps we should deal in more detail with that when we deal with the response of Standard Chartered.

LORD HAIN: I am very happy to do that Chair. I assert that they are all culpable, all three and conceivable other banks as well but

particularly those three were some of the main ones used by the Gupta and we deal with some of the details.

ADV PRETORIUS: Yes.

LORD HAIN: I am sur we will later on.

ADV PRETORIUS: In paragraph 12.1 to 12.6 you deal in a little more detail with the problems that arise in the international banking context.

LORD HAIN: Yes I mean this is the nub of the problem. First of all you have got the secretive nature of these transactions through the international banking system because the source of the funds and the ownership of the accounts, the particular accounts in these banks was
10 often obscured. Then there were unexplained payments from third parties with little or no apparent connection to the underlying transactions. Many accounts were used to transfer funds to various amounts – various amounts around shell companies. Perhaps I will explain what I mean by shell companies or front companies if you like Chair which do not conduct trading themselves but allow funds to flow through them whilst obscuring the identity of the persons who control them. Classically this was done by the Gupta's. What I mean if I may?

ADV PRETORIUS: Yes please.

20 **LORD HAIN:** By shell – by shell companies.

ADV PRETORIUS: And you referring to QQd?

LORD HAIN: Yes I am.

ADV PRETORIUS: The document is in there Chair but by – for reference purposes only.

LORD HAIN: So these – these as I have indicated could be described

as front companies. Essentially they used to hide of fustigate who the ultimate owners of the companies are. For example the shareholder of a UK company might be a company that is registered in the Cayman Islands. The shareholder of the Cayman Company concerned might be a British Virgin Island's company that is then held by another company registered in the British Virgin Island's Cyprus or Vanuatu whose sole director is then found to be deceased. This exemplifies the lengths to which some of these owners, the ultimate owners – so called beneficial owners will go to hide their interest and therefore conceal the ability of the regulatory and enforcement authorities to actually chase them down and find out who exactly is involved and... So it is very difficult to see and identify who is standing at the top of this tree of successive linked companies that are all in a way illicit – illicit shell operations. The other thing that is – was apparent from my investigations is the information held by company registries for example here in South Africa as to the ownership of a company it may actually not be accurate.

If I take an UK example for instance. The UK authorities in 2018 successfully prosecuted an individual for forming companies and making Members of Parliament directors and shareholders of the said companies without their knowledge. I think on one occasion the – one of the directors concerned in the shadow operations was actually named Mickey Mouse which you know is symbolic of the shadiness of this regular practice. And it has been widely documented in the media, investigative media and elsewhere that the Guptas used shell companies.

For example in Dubai, Hong Kong and beyond to - to move their assets and the final point I would make about the shell companies - and it is an important one and we will come onto this I guess - is that this concealment of the true ownership is actually assisted by professional enablers.

By that I mean lawyers and accountants who are paid by the ultimate owner to create these complex company structures often a legitimate reason given to the professional enabler concerned. Is - is lawful tax avoidance - if it can ever be lawful - and some of them these
10 professional enable - enablers have off the shelf companies that they can simple - they previously had incorporated.

They can simply literally grab them and transfer them into a client company for a - for a fee. So to be frank Chair they are all up to this in their neck as well. They all up to their neck in this as well.

ADV PRETORIUS: And as you say in relation to illicit dealings in money for example in South Africa or in a particular country. This enabling activity takes place on the international stage?

LORD HAIN: It does, because there were lots of unexplained connections and movements of monies between jurisdictions which
20 were never explained and the Guptas actually who were the beneficial owners - the ultimate owners - of most of the companies concerned. They - as I think evidence has shown to your Commission and is widely known - were very close to the former President Zuma in South Africa and there was increasing awareness of corruption and State Capture and it being rife under the former President's administration and yet

these banks and - and international corporates continued to affectively work with the Guptas and enable them to conduct their nefarious activities and launder the money around the world. So ...

ADV PRETORIUS: Do I understand you to be saying that despite the warning signs in the media and in the public domain these international activities continued?

LORD HAIN: They did indeed Chair and they continued because of course the corporates concerned including the banks were making money out of it and this increasing exposure of State Capture was
10 happening in the investigative media here in South Africa and in other - other ways as well and it was very apparent to me that the legitimate funds created by the Gupta enterprises were dwarfed by the funds that they amassed through illegal activity and they could not have amassed this - this illicit fund - these illicit - this illicit wealth without the corporates and the banks working with them and effectively being their little helpers along the way.

CHAIRPERSON: So part of your evidence is the Commission should look at to what extent banks may have played a role which facilitated that monies, funds obtained illicitly as part of State Capture left the
20 shores of the country when maybe by doing their job properly the way they should have they might have prevented that. Part of what you are saying is - is that. Is that correct?

LORD HAIN: It is exactly that Chair.

CHAIRPERSON: Yes. Okay.

LORD HAIN: All the warning signs were there.

CHAIRPERSON: Yes.

LORD HAIN: They even turned a blind eye to them ...

CHAIRPERSON: Yes.

LORD HAIN: And now they claim they knew very little about it which frankly I do not believe.

CHAIRPERSON: And - and I guess that part of what you are saying is also let us look at when the banks started acting and see whether they may have been justified in not acting much earlier than they did. That is part of what you say we must look at?

10 **LORD HAIN:** It is part of what I am - I am saying Chair and as I will come to ...

CHAIRPERSON: Yes.

LORD HAIN: Reforms that may - you may want to consider.

CHAIRPERSON: That may need to be - yes - yes.

LORD HAIN: On behalf of the Commission.

CHAIRPERSON: Yes.

LORD HAIN: To stop this.

CHAIRPERSON: Thank you.

20 **ADV PRETORIUS:** You do give some examples in paragraphs 13 to 15 and you make a conclusion that has been alluded to or suggested by the Chair in paragraph 16. You - you wish to deal with that now?

LORD HAIN: I would Chair. I mean the first example is - is a transaction that should have been stopped by the bank concerned or at least investigated and that was a loan on 18 January 2017 by Trillion Management Consultancy. Then majority owned by the Gupta associate

Salim Essa and that involved 160 million to Centaur Mining which was a Gupta owned company via Trillion Financial Advisor.

A Gupta owned company again and I provided the source for that in - in my submission Chair and then the Bank of Baroda South Africa which is part of India's state owned bank - state owned bank - state owned global Bank of Baroda. It is the South African arm of it. Their bank accounts were utilised for this particular movement of funds and the reason for this chain of transactions was stated to be an intercompany loan.

10 That was the - the - as it were - the explanation given. However no loan documentation that I can identify has so far been found to exist and no explanation was reportedly provided to the bank for the structure of the transaction. Other reports into the activities of this branch of Baroda Bank in respect of Gupta associated accounts and transfers indicated that it issued loan guarantees without approval and that it may have quashed internal compliance concerns raised by its own employees.

20 So here is a - frankly a - a naked example of an international bank. In this case part owned by the - the Government of India. Not just turning a blind eye to money laundering of a very serious kind, but actually when its own employers - own employees raised - raised issues the senior management - presumably it was them just waived it through and then another example which is well known in South Africa.

ADV PRETORIUS: Just before you go on Lord Hain. The source of the information and that paragraph as appears from footnotes five and six

at the bottom of the page appears to have been a particular investigation into organised crime and corruption?

LORD HAIN: That is correct Chair. That is correct. The second example that I quote is the one I think widely known in South Africa and that is the South African Government funding for a state financed project the Estina Dairy Farm. Now that was transferred via the Gupta controlled Estina Limited to a Standard Chartered Bank Account held by Gateway Limited a Gupta owned company.

Registered in the United Arab Emirates, Dubai in May,
10 August, September 2013. Standard Chartered did not stop this transaction despite the fact that Government funds were leaving the jurisdiction. They were leaving South Africa to a company beneficially owned by the Guptas with no material explanation provided at all regarding the suspicious payment structure.

Now that seems to me Standard Chartered Bank there are you know culpable and guilty of facilitating criminality by the - by the Guptas in this case and their wider associates and the point I make and I will perhaps if - if this is okay refer to Standard Chartered specifically.

20 That you know banks should have access to customer data and transaction data for all the accounts they open and the transfers they facilitate and they should be in a position to - to monitor legitimacy of any of these transactions. As well as having regulatory and moral responsibilities to recognise, to stop and - and identify illegal money flows, but after I had exposed the internal dimension to

State Capture in the British Parliament beginning in November 2017 I met senior directors of HSBC and Standard Chartered.

They asked to see me, because I had referred to them in Parliament and frankly I found them - I found a great reluctance from both of them citing this question of client confidentiality. Which is the excuse they hide behind to actually admit to their culpability and to cooperate fully when I specifically asked them to track the money laundered by the Guptas under the - under President - former President Zuma's administration and I find this quite unacceptable.

10 So this is directors in - of banks in London simply saying okay. We had Gupta accounts, but we closed them years ago. We are not responsible. We have not culpability. In my view they are directly culpable for what happened in this instance and perhaps with your agreement Chair I could refer to - I am not sure what it is called, but refer to the response to my assertions here made by Standard Chartered in the - in this - in the submission they made to - to your Commission.

CHAIRPERSON: Yes.

ADV PRETORIUS: In the small lever arch file - QQC Chair.

20 **CHAIRPERSON:** Yes.

ADV PRETORIUS: At page 99 is the response of Standard Chartered on affidavit by one Bam at page 99.

CHAIRPERSON: Under tab number?

ADV PRETORIUS: The tabs ...

CHAIRPERSON: Or is it right at the end? I have got it.

ADV PRETORIUS: It is right at the end.

CHAIRPERSON: I have got it.

ADV PRETORIUS: There is a tab SC. A blue tab SC right at the end.

CHAIRPERSON: Yes.

ADV PRETORIUS: Page 99.

CHAIRPERSON: Okay. I have got it.

LORD HAIN: Chair I think ...

CHAIRPERSON: Yes.

LORD HAIN: I think this was submitted by Standard Chartered in
10 response - in the usual way that your Commission properly operates as
I understand it. In response to my evidence ...

CHAIRPERSON: Yes.

LORD HAIN: And was sent on 15 November by their Sandton - from -
from Sandton and I regard it as a shameless body swerve frankly. They
- they never came forward to - at the beginning to actually help in any
way to track this money down and identify where it went and the Estina
Dairy Farm Project - infamous project was one of the clearest examples
of organised robbery from some of the poorest people in South Africa.

In this case in the far - in the Orange Free State and so they
20 did not come forward. They cite in paragraph 9 of the - their response.

CHAIRPERSON: I am - I am sorry lord - Lord Hain. I think
Mr Pretorius what we should do so that those who are listening and do
not have the benefit of the document in front of them and those who are
watching on TV or whatever. I think Lord Hain should say what the gist
of the response is.

ADV PRETORIUS: Yes. I had intended to do so myself.

CHAIRPERSON: So that then he can comment.

ADV PRETORIUS: Perhaps as it is a commissioned document may I just read those relevant paragraphs onto the record?

CHAIRPERSON: *Ja.* That is fine. I think what is important is that people must understand ...

ADV PRETORIUS: Yes.

CHAIRPERSON: What was Lord Hain's criticism of them and what is their response and then he can comment on their response.

10 **ADV PRETORIUS:** (Indistinct).

CHAIRPERSON: Hm.

ADV PRETORIUS: I think if I may just summarise. I do not want to put words in your mouth Lord Hain and you will correct me where I misrepresent your views, but there are several steps or stages. The first is the investigative stage into a suspicious transaction. The second is its disclosure to relevant law enforcement agencies and in particular the criticism is that a bank should not remain supine until a law enforcement agency comes knocking on their door, but they have positive duties in this regard and as I understand what Lord Hain is
20 saying is that they failed in these duties of proper investigation, proper reporting and putting in place preventative measures. Is that a fair summary Lord Hain?

LORD HAIN: That is the correct - that is correct Chair.

CHAIRPERSON: Yes. Okay.

ADV PRETORIUS: What - what Standard Chartered say in their

response to the notice issued to them Chair and I will start with paragraph 5.

“With particular reference to the comments made in paragraph 15 of Lord Hain’s written statement I completely refute and rebut the suggestion that Standard Chartered Bank was in anyway reluctant to engage with Lord Hain on this matter.”

That is a factual matter that Lord Hain can deal with.

CHAIRPERSON: Yes.

10 **ADV PRETORIUS:** The affidavit goes on to say:

“SCB takes its responsibility to combat financial crime very seriously and is fully committed to doing business in accordance with local international regulatory and legal requirements.”

And it is in particular those international regulatory requirements that Lord Hain will refer to later in his evidence Chair. In this case they affidavit continues in paragraph 7.

20 “SCB has conducted a thorough investigation into all the allegations as part of this investigation. SCB has made disclosures to the appropriate authorities in a number of jurisdictions. SCB has fully discharged all its legal and regulatory obligations wherever they have arisen and wherever possible it provided support and assistance to law enforcement investigations into the allegations.”

And then importantly for our purposes Chair.

“I confirm SCB’s commitment to working with the South African regulators and anti-crime organisations to combat corruption and financial crimes.”

Further importantly Chair in relation to the evidence.

Paragraph 9 reads:

10 “SCB is only able to disclose information where that information is lawfully requested via the appropriate legal channels. SCB’s disclosure of information by any other means risks breach of applicable regulatory and/or contractual confidential obligations to our clients which we cannot ignore.”

And as I understand Lord Hain it is particularly that which he wishes to address. In other words are the banks entitled to remain supine notwithstanding their knowledge and wait for the knock on the door from the law enforcement agency and then paragraph 10?

20 “I understand that SCB - Standard Chartered Bank United Arab Emirates has made the necessary disclosures in accordance with its local regulatory obligations in relation to accounts with apparent connections to the Guptas.”

Again the point there that Lord Hain will address Chair is whether in countries with lighter regulatory provisions and

demands that is sufficient and then paragraph 11.

“Standard Chartered BJ does not however have access to the SCB UAE customer account information nor would be SCBJ be able to provide UAE account information to you in response to a South African production order.”

So in fairness Lord Hain that is the position of Standard Chartered Bank. It has now been placed on record fully and your comment then is invited.

10 **LORD HAIN:** Well Chair I have great respect for lawyers in the legal profession. You do an important job, but to be frank this read to me as a - as a sort of lawyers smooth talk around culpability here over Estina in particular by Standard Chartered Bank. They make a number of points here.

First this question of client confidentiality which they made to me as did H - HSBC. Bank of Baroda never came to see me. Although through an intermediary they complained that I had been unfair to them. To which my answer was well if you want to come to me that is fine by me, but this continual thing about client confidentiality.

20 Now I understand the principle. All of us who have bank accounts are entitled to have those bank accounts be confidential. If we the confidentiality of those bank accounts we will all expect that and have a right to - to do so, but we - we honest citizens. If you have criminals using banks facilities and their accounts to engage in their criminality then I do not accept this excuse of client confidentiality.

That is the first point I want to make and I think the - the international banks HSBC, Standard Chartered and Bank of Baroda to give three examples are hiding behind this principle to conceal their complicity in international criminality and money laundering. It seems to me to be obvious from these examples.

Then they make this point about - in paragraph 10 of their response that the UAE has made - that the bank - their - their banking arm in the UAE has made the necessary disclosures. Well to be frank that is where the Estina money went. So I do not really care whether
10 they made the necessary disclosures or not.

Why was that money not returned to the South African taxpayer and hopefully eventually to the Orange Free State very poor farmers. So I do not accept this. That - that their Dubai bank has complied with the local regulations, because clearly criminality went on there.

Laundering and - and robbery was facilitated by Standard Chartered and the final point I simply wanted to dispute - dispute is or comment upon is this final paragraph of theirs that they say that the Johannesburg Standard Chartered Bank. They call SCBJ does not have
20 access to the UAE's customer account information and nor would they be able to provide information in response to a South African order, but I just say hang on for a minute here.

The money left Standard Chartered Johannesburg account. The - the Guptas moved it through various concealed ways from that account to the Dubai account. There was a pipeline - a financial

pipeline between the two. They were an international bank. Then to say sorry Gov, nothing to do with me, because they are in another jurisdiction and apparently they obey its local regulations.

Though Dubai's regulations are notoriously lax and light and that is why this sort of money goes through Dubai and other places. I - I just do not accept that kind of evasion and yet it is - it is - time again that is what is being said to me by the international banks. Why do they not voluntarily cooperate with this Commission and indeed with the regulatory and enforcement authorities?

10 **CHAIRPERSON**: Thank you.

ADV PRETORIUS: Lord Hain there - there are a few matters of detail that I would like to put to you. They do not detract I must say from the general points that you are making which I will revert to in a moment, but our investigative information is that the money left South Africa via Standard Bank, First National Bank and Bank of Baroda, but that is a matter of detail that we will deal with in evidence in due course and we will ask the Char obviously to rely on the original investigative work that we have done in order to reach much the same conclusions, but it seems that three points emerge from the exchange between yourself
20 and Standard Chartered on the one hand and between Standard Chartered and the Commission which has just been put to you on the other.

The first is a problem which you address later and that is the wall really that stands in the way of transparency and the free flow of information. Protected or built on the foundations of the confidentiality

principle. That is the first issue that they - they raise and the question then arises as I understand it in your later recommendations as whether notwithstanding the principle of confidentiality banks should nevertheless be under a duty - as they are in South Africa - to report suspicious transactions and the like, but on an international scale.

The second issue that is raised here which you also deal with in your evidence later is the fact that monies can be transferred to a jurisdiction where there are less stringent regulatory requirements and that they - these monies therefore are from the point of view of the
10 miscreant safer. Is that the second point?

LORD HAIN: That is correct Chair.

ADV PRETORIUS: And then thirdly it is the apparent stance taken by international banks that what happens in one branch in one country is not really accessible to the head office in another country. Is that correct?

LORD HAIN: That is also correct and we come across another example of this in respect of a law firm later in my evidence.

ADV PRETORIUS: And that in fact is - is much of the debate at least at a general level of principle raised by this exchange?

20 **LORD HAIN:** Yes. It is Chair. It is the contradiction between a bank say in South Africa having a financial pipeline to its branch in Dubai, but once that money has left South Africa claiming it has got no locus or responsibility for it. It is something entirely different though it is the same international bank and it has nothing to do with us and we cannot be held responsible. I do not accept that.

It is one bank. It is one financial pipeline. It is electronically moved with a digital footprint and they have got to take responsibility. Either as a global bank or both ends of it and in - in South Africa - the South African branches of these banks concerned they have got to take responsibility as well.

They cannot just say the money has left us. Nothing to do with us. What happens to it thereafter?

ADV PRETORIUS: And so there are two issues really that I understand you deal with in your submission Lord Hain. The first is the degree of
10 culpability that should be borne by international actors. In this case the banks, but the other is that whether or not the reasons given by the banks for their actions are justified or not.

There are problems and it is those problems that you seek to address in your recommendations later. Is that - do I understand you correctly?

LORD HAIN: Indeed Chair. I mean I think the banks have got to take full responsibility for monitoring transactions and ensuring that there is adequate compliance policies which clearly - and procedures which clearly was not the case in the examples I am being given - that I have
20 given and they have got to make sure that - that this compliance and monitoring happens in all branches and business areas internationally.

In other words it is not just say a South African bank question. It is also a Dubai and a Hong Kong and a London for that matter the same bank concerned. They have all got to accept their interconnected responsibility in an interconnected global financial

system.

ADV PRETORIUS: Chair and then if I may just place on record in fairness we have had a response to a 3.3 Notice from HSBC. I am - I am informed that their response predates the particular notice referred to.

CHAIRPERSON: Oh, okay.

ADV PRETORIUS: They have offered cooperation to the Commission ...[intervenes]

CHAIRPERSON: Yes. Okay.

10 **ADV PRETORIUS**: And that will be pursued by the investigators.

CHAIRPERSON: Okay.

ADV PRETORIUS: In paragraph 17 Lord Hain you deal with and - and that is not to comment on the historical situation that offer - that will be dealt with in evidence in due course Chair.

CHAIRPERSON: Yes. You are done for now with QQC?

ADV PRETORIUS: Yes Chair. Thank you.

CHAIRPERSON: So we go back to the main submission?

ADV PRETORIUS: Yes.

CHAIRPERSON: QQA?

20 **ADV PRETORIUS**: Yes. Paragraph 17 you deal with another category of enabler on the international scale and those are the professional enablers?

LORD HAIN: Yes Chair. Perhaps if I could just describe this. Professionally enablers are persons or entities that become involved whether intentionally or unintentionally in facilitating the “cleaning” of

laundered money. I have put cleaning in quotation marks. In return for a fee.

So their - their role is to disguise the source, the location and ownership of funds. An examples of professional enablers include lawyers, auditors, accountants and estate agents. Law - lawyers might assist by setting up complex corporate structures in a way that I described of shell companies.

Enabling money to move from one country to another country. Perhaps the other country where there is low transparency unlike the
10 originating country like South Africa where there is more.

So that's what lawyers do in this. Accountants might incorrectly audit the company's finances leading to suspicious transactions being hidden in the accounts and estate agents might receive the laundered money into their client accounts during the property purchases concerned without properly checking on the original source, so I mean that's the professional enablers that have been the ones alongside the Gupta Brothers for example enabling them to continue with their criminality.

ADV PRETORIUS: In paragraph 18 you give an example that might be
20 instructive to our own law enforcement structures here.

LORD HAIN: Yes Chair this was a United Kingdom example of where the solicitors regulatory authority which governs solicitors practices, legal practices in the UK, they conducted a review into 59 law firms in England and Wales to see whether they were complying with their money laundering checks responsibilities and out of that 59 26 of those

were ultimately referred for disciplinary processes, so in other words nearly half were not complying.

Now if that's the case in a country which like the UK which scores pretty highly on anti-corruption international indices of transparency international, for example I think the UK is 11th, so it is one of the best countries for transparency and anti-corruption measures. Then if that is the case there nearly half the legal firms surveyed were not complying with money laundering obligations, imagine what it's like in what professional enablers are up to in
10 countries with worse standards of corruption and transparency, the mind boggles frankly.

ADV PRETORIUS: And then you give specific examples in paragraph 19.

LORD HAIN: I do, these were examples of corporates, global corporates that assisted the Gupta's in their looting from the South African people, including KPMG, Ayan & Company and Hogan Lovells, the International law firm, and what happened was these firms all profited while the Gupta's hid funds stolen from South Africa, funds that would otherwise have been spent on essential public services and on
20 helping repair the colossal damage caused by apartheid, which is still a huge deadweight on the country, so they earned fat profits out of these operations but they actually assisted with the looting indirectly, they were not personally responsible for the looting but they gave advice and assistance in their professional capacities to the Gupta Brothers to enable it to continue.

ADV PRETORIUS: Your interactions with Hogan Lovells those I understand were with Hogan Lovells International based in the United Kingdom?

LORD HAIN: Yes, in 2018 Chair I referred Hogan Lovells to the - Hogan Lovells UK, because it was the only branch of this international law firm that I could so do, to the solicitors regulatory authority for whitewashing corruption within the South African Revenue Service and asked that it be disbarred from practicing in the United Kingdom for its complicity. The solicitors regulatory authority, and this is another
10 example of what you know happens, originally accepted they did have a *locus* to investigate the British end of it because it was an international law firm, as they explained to me, but then they accepted Hogan Lovells' UK explanation that actually Hogan Lovells International was only international for branding purposes and that the South African Hogan Lovells which had been the ones, which had whitewashed corruption in the South African Revenue Service with its report which simply turned a blind eye to all of the corruption and they got a fee for it as well, but the South African arm, it was nothing to do with the British arm of it, because it was only a branding kind of link.

20 Now Hogan Lovells do present themselves as an international law firm, so – but for these purposes when they were put on the spot they were suddenly not, it was just a branding exercise, and this is an example of the sort of sophistry that I am afraid these professional enablers resort to, to try to evade their responsibility for complicity.

ADV PRETORIUS: I am informed and I don't know if you are aware

that Hogan Lovells South Africa is no longer in existence it is now Lawtons Africa, I am not sure of what arrangements were made in the dissociation between Hogan Lovells International and local but perhaps if it is necessary that will be dealt with at a later stage.

LORD HAIN: I understand that to be the case Chair and what I note is that unlike for example KPMG and McKinsey who were directly culpable in assisting the Gupta's with their looting Hogan Lovells never accepted their responsibility, they flatly denied it and that for me put them in a particular as it were conviction box if I could put it this way of
10 culpability because the others at least did admit responsibility, maybe not sufficiently for – some people might say but they did own up to some extent, Hogan Lovells have never owned up, but they have as I understand it lost business and have had to dismember their South African arm and there we are.

ADV PRETORIUS: If one goes to paragraph 21 there you deal with KPMG and as I understand it much of the information relevant to their activities was the product of – or was at least reported on in an internal report, as I understand it.

LORD HAIN: That is as I understand it as well, and I have given my
20 sources for what I say, I mean they were another example Chair of a professional enabler who assisted the Gupta's through KPMG South African division. They were responsible for auditing various Gupta companies for around 15 years, up until March 2016, and during this period KPMG flagrantly ignored warnings regarding the integrity and the ethics of the Gupta's and the falsely categorised spending such as

a wedding in 2013 as business expenses, whilst earning significant fees themselves for performing auditing services.

The fees by the way ultimately paid for by the laundered stolen funds, and eventually they did conduct an internal investigation and sacked I think eight senior executives, to their credit KPMG had them sacked, and they came to see me as well Chair and explained what they were doing, and there was no attempt to cover up or evade responsibility in the way that Hogan Lovells have consistently done.

ADV PRETORIUS: And then you deal in paragraph 22 with a third
10 example, that has been the subject of investigation by the Nugent Commission and you refer to the findings of the Nugent Commission in regard to the Boston based consultancy firm Bain?

LORD HAIN: Yes I do Chair, they are responsible for coaching the head to be, Tom Moyane, the head to be of the South African Revenue Service, SARS, a full year before he was appointed Commissioner as I understand it under President Zuma's request, and they were coaching him on what he should do to turn the South African Revenue Service from one of the most respected tax collecting agencies in the world to one that became dysfunctional under Moyane's leadership and several
20 of these coaching sessions apparently took place at Nkandla, the private homestead of former President Zuma, and I have a quote there from the Nugent Commission which recommended criminal prosecutions against Bain & Co for what was an outrageous form of culpability that you know for a global corporate that allegedly maintains high international standards in its global operations this was astonishing

complicity in criminality.

ADV PRETORIUS: Then if you go to paragraph 23 you draw some conclusions from these examples, or reported examples.

LORD HAIN: Yes Chair this is the point about these professional services firms that they have access to client data that the regulators don't have, that enforcement authorities don't have, so they are actually best placed to monitor and report and recognise suspicious transactions and suspicious customer activities and I think it's incumbent upon them to see their role as global compliance enablers,
10 not just professional enablers, they should be doing the jobs that the enforcement authorities and the regulators can't possibly do because they don't have the same access to a customer and account data that these corporates do. They should be the first line of defence against criminality and money laundering and state capture and robbery on this industrial scale that we saw in South Africa and may still be going on for all I know.

They should be the first line of defence and be the ones who alert the statutory authorities and yet they haven't been doing so, and I still don't think they are doing so.

20 **ADV PRETORIUS:** You deal in paragraph 24 and the paragraphs that follow with corporates, do you wish to just take the Chair through those observations please?

LORD HAIN: I do Chair because quite understandably accusations have often been directed, accusations and allegations of corruption at for example Government Ministers or ANC politicians or EFF politicians

or whoever it might be, or government officials, but actually South Africa is a living example where privately owned companies made this possible, so it is not just a question of identifying the public officials or politicians responsible it is also the complicity of these corporates who gained fat fees for doing business with criminals and often gaining lucrative contracts for example from the Gupta's in order to continue that, in other words it takes two to tango. You need corrupt politicians or officials on the one side of the State Capture equation but you also need if not corrupt then certainly highly unprofessional corporates
10 conniving in this criminality on the other side of the equation and this is clearly what happened.

ADV PRETORIUS: You give an example in paragraph 24.

LORD HAIN: I do Chair, this is the example of the UK's Serious Fraud Office engagement with Acacia Mining in December 2018 in relation to employees in Tanzania engaging in corruption, this is exactly the sort of conduct that in this case the UK Serious Fraud Office was looking into but often the enforcement agencies like the Serious Fraud Office in the UK are not aware of what's going on because as I say the professional responsibility of the auditors or the lawyers or the
20 corporates concerned, the consultants concerned they are not discharging their professional responsibilities. The State Agencies can't be aware of everything that is going on in every business, in every bank, in every corporate concerned. These corporates are supposed to abide by high standards of international professional conduct and clearly in the South African State Capture saga they did

not, they fell well below those standards.

ADV PRETORIUS: Then in paragraph 25 you refer to the methods used by corporates that might facilitate corruption and the exploitation of corrupt relationships, you have largely dealt with it, is there anything you wish to add? There is more detail in paragraph 25.

LORD HAIN: I think this is – perhaps I will touch on briefly this form of rent-seeking as it is called, it is a form of bribery, where the company is awarded a private or government contract for an agreed price that is often inflated to take into account various bribery payments and it's
10 called in the financial community rent-seeking, without there having been a fair bidding process, without actually the companies concerned having proved their capability to discharge the responsibilities for which they are being contracted and these contracts infected with this form of rent-seeking or bribery often really perform properly, and sometimes even not performed at all, as we saw in the Estina Dairy Farm case for example, and I set out some examples which I think some of which are well known to the Commission.

CHAIRPERSON: Mr Pretorius I think we should take the tea break.

ADV PRETORIUS: Yes thank you Chair.

20 **CHAIRPERSON:** Yes, we will take the tea break now and we will resume at half past eleven.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV PRETORIUS: Thank you Chair. Lord Hain in paragraphs 26 and following you deal with three examples involving corporates. In relation to Transnet there has been substantial evidence in relation to the example that you give. It has been pointed out to me that the 250 million pounds you refer to there translates to approximately R5 Billion. In fact the amount in the evidence has been R5.267 Billion just for record purposes. You then deal with an example of housing in the Free State that will be the subject matter of evidence in due course on which
10 the Chair can then rely. And then thirdly you deal with the issue of consultants. Some of that evidence has already been given, some has yet to be given will be the subject of detailed evidence following investigations before the commission. I am not sure that there is anything you wish to add to those examples that you give but if there is please do so?

LORD HAIN: First of all Chair I need to correct myself.

CHAIRPERSON: Yes.

LORD HAIN: I think it was the Free State rather than the Orange Free State of my youth but I apologise for that. The only point that may be
20 worth making here is that many global brand names like SAP and McKinsey who shamelessly cooperated and were complicit in this looting earned enormous fees and therefore stopped that money scarce tax-payers money from providing much needed health education, housing and other vital provisions in the country. And I suppose if I may Chair the country is still weighed down by the apartheid legacy of

mass unemployment, poverty and deliberate under-skilling under apartheid and for those like my parents who were involved in the freedom struggle and made sacrifices far less than the leaders of the struggle like Nelson Mandela and Walter Sisulu and many others made in giving up the best years of their life or many others who were assassinated and tortured but I give the example of my parents because what other reasons I have been able to I hope help shine a bright light on the international dimension. Because I feel a degree of serious pain that the freedom struggles values have been prostituted by
10 this terrible saga of state capture and corruption and looting. And I feel that the global corporates that I have mentioned here they are responsible too for – for the prostitution of those values. They have – the Nelson Mandela vision that we all fought for has been of integrity and morality and social justice and equality that has been shouldered aside for this quite shameless looting.

ADV PRETORIUS: Alright. You deal then Lord Hain in paragraph 30 and following with another international structure at this stage the level of states. Would you just clarify your observations there for the Chair please?

20 **LORD HAIN:** Well so far Chair I have dealt with the private sectors complicity in all of this. And actually governments are complicit as well – foreign governments and I think they should take responsibility and own up. Because we live in a world where globalisation has made it easier for criminals to distribute tainted funds or stolen funds more broadly. And some of the countries where it ends up are unconnected

to the original crime for example in South Africa. But a really complicit in it albeit indirectly for allowing their jurisdictions to have these funds enter and often be spent. And so criminals also exploit the differing regulatory standards and the lack of will in some jurisdictions. I think for example Dubai and Hong Kong and India at the present time in respect of the Gupta's to locate their assets and launder their funds into those jurisdictions. So my focus in this particular part of the evidence is on the states and the governments' responsibility. It is not just a problem with the private sector as I have described it but also of governments. And you know I think a lot of governments have paid lip service including the United Kingdom to curbing financial crime without actually doing so. You know the UK and South Africa have pretty strong anti-money laundering regulations but the Gupta's and others have used both countries despite those anti-money laundering regulations to launder money on a prodigious scale. So something has gone badly wrong in the international arena and I think that global states – states on a global basis need to own up and take responsibility and take action and not just make speeches and issue policy papers objecting to international crime but actually take the action and so far they have not.

ADV PRETORIUS: In paragraph 30 Lord Hain you refer to the ability for corrupt parties to escape really to foreign jurisdictions and you mention three characteristics that might exist in those foreign jurisdictions in paragraph 30 firstly where regulations or the regulatory framework is weaker. But secondly where regulators are underfunded

or themselves for one or other reason less than energetic about regulations and thirdly whether – where there might be less transparency and less regulation in relation to corporate ownership.

LORD HAIN: That is correct Chair all of those three factors are apparent in some of these jurisdictions.

ADV PRETORIUS: And then in paragraph 31 you deal with extradition. Perhaps you would like to comment on that?

LORD HAIN: Well some of the criminals involved, the Gupta's are an example of this go to countries where there are no extradition
10 agreements or where there are extradition agreements Chair. Those are not properly enforced. So the Gupta's went to Dubai for instance. That is where they reside. They have a home there, a registered home. And that is where they went as I understand it after fleeing South Africa early in 2018. And although there had – there is now an extradition agreement between South Africa and Dubai which there was not previously they have not been extradited and I would – you know I hope that the commission will be able to find out why that is the case. Where – has it been a failure at the Pretoria end as it well – as it were or the – at the Dubai end. I suspect it is the Dubai end and we may
20 well come back to that Chair.

ADV PRETORIUS: You deal in paragraph 33 with the Hong Kong example.

LORD HAIN: I do. The – I think I am right in saying that the head of the South African Reserve Bank informed the commission during his testimony to you Chair that R52 million was moved from South Africa to

Hong Kong via a Gupta owned company called Homix to Morning Star International and YKA International Trading Companies which are Hong Kong companies. And other reports have indicated that some of the funds laundered in Hong Kong were used to purchase diamonds via a company such as Simoni Gems, a Hong Kong company linked to the Gupta's that received funds from South African Gupta companies. These funds have not been repatriated at all to South Africa. Nor as I understand it have the Hong Kong authorities taken any public action against the Gupta's. And I think you know it is incumbent upon Hong Kong to actually cooperate in this. Otherwise it stands accused of being culpable in this international criminality.

ADV PRETORIUS: Yes.

LORD HAIN: There were other reports that for example a 100 million Dollars of the kickbacks received by the Gupta's in – on the Transnet locomotives example were channelled through HSBC Hong Kong accounts of their front companies Tequesta and Regiments Asia. So now we have another example of HSBC in this case being a conduit in – in Hong Kong for illicit money laundering.

ADV PRETORIUS: You touch on the second of two themes that underlie your submission Lord Hain. The one is prevention. What are the problems of corporates states and other stakeholders in preventing what you refer to by way of example in your submission? But the second is recovery and what are the problems that stand in the way of rapid and expedited and full thorough recovery? And if I may just observe as I think you have in your paper whether parties are guilty or

not or conscious or not of it the problems remain and it is the problems that you seek to address in your second part. Do I understand it correctly?

LORD HAIN: Chair that is correct. That if for example the banks concerned claim they did not know I find that hard to believe. But let us take that at face value. HSBC, Standard Chartered Bank, Baroda Bank for example. And if the authorities let us say in Hong Kong and Dubai claim they did not know all this was going on – this – this vast money laundering and robbery through their own systems in those
10 jurisdictions there is still a fundamental problem in the international financial system. It is still a problem that has to be addressed and they have to help us address it. That it is no good saying we did not know. There is a question – why did they not know? For the reasons I explained earlier in my evidence and they should have known but it has been going on, nobody can dispute that on their watch. On their watch's banks as corporates and as governments and I mentioned Hong Kong and Dubai particularly. They have never accepted responsibility. They have never owned up and yet they stand in my view in a line of – a line of complicity in robbery from South Africa on this massive scale.
20 And they should accept that responsibility. If I may Chair since it was raised come to the repatriation or recovery of the funds concerned? Because it is not going to happen unless the states themselves prioritise it. Their regulatory authorities, their enforcement authorities. The funds that were looted a lot of which have already been spent and I hope to come back to that later in my submission in evidence. But you

will never get those back and those responsible face trial unless there is wholehearted and determined cooperation from the governments and the corporates concerned. Because often they are in – they are beyond the jurisdictional reach of the South African Enforcement Authorities and you know I do not think it is enough to establish legislation and such it is admirable legislation such as the UK's Bribery Act of 2010 or South Africa's own powerful Anti-Corruption Laws. What you have got to also do and this is a key point if I may I would like to stress for your consideration? The enforcement and investigative agencies in the UK

10 for example the serious Fraud Office, the National Crime Agency and the Financial Conduct Authority those are our principle regulatory and enforcement authorities. In South Africa different ones need to be properly resourced. And if I use you know – if I use – if I use the example of the UK here the National Crime Agency asked for 2.7 Billion extra resources from the current UK government.

ADV PRETORIUS: Pounds?

LORD HAIN: Sorry 2.7 Billion Pounds and that is billion pounds. That is a massive number of I do not know how many Trillion rand I would expect. They were denied it and actually told off by the British

20 government for asking for it in the first place. And yet they were saying this problem of financial crime and money laundering is such – on such a gigantic scale that they cannot cope with it with their existing resources. Well if that is the case for a well-resourced you know country like the UK, the fifth richest economy in the world if their enforcement authorities are under resourced by that margin imagine

what the case is in South Africa or other countries which face this – which face – you know and have to deal with huge problems of – of poverty and unemployment and inequality.

ADV PRETORIUS: Perhaps Lord Hain I should just clarify both to yourself and to the Chair that where culpability and fault criminality is at stake our remarks as a legal team should not be interpreted to mean that these will not be fully investigated and dealt with. But as I understand the issues you raising it goes further than that even if there is an explanation or a defence or a response as we have seen to
10 allegations of criminality. There is still a further problem and that is how these international problems address to prevent this sort of occurrence to which you refer happening in the future and to facilitate repatriation extradition and the like.

LORD HAIN: Yes indeed Chair. We have got a situation where all the states the UK is in the lead on this say they condemn corruption on the international stage and yet nobody admits obviously in government to – to approving of it. But it is still a fact that they allow the proceeds of crime to be pumped through their economies and I think and then come to the remedial steps that I suggest. I think it is incumbent upon
20 governments around the world, my own in the UK should be at the head of the queue to accept that they have a responsibility for what happened in South Africa. Just as the global corporates did, the ones that I have named that have been well documented. But governments need to as well. They cannot on the one hand say, we disapprove of this when it has been happening and nobody – they cannot dispute that

it has been happening on their watch, often in their jurisdictions. They must therefore take action or nobody will believe that they really are opposed to money laundering and international corruption on the scale which we have seen and with South Africa is a sorry example of it.

ADV PRETORIUS: In paragraphs 34 AND 35 Lord Hain you deal with the state's Dubai and India or United Arab Emirates and India. Do you have anything to add or just to highlight those examples?

LORD HAIN: Well I – I list there Chair the address of the Gupta's home in Dubai and nothing is done about that. It must have been
10 purchased by the – the illicit criminal – criminally extracted funds from South Africa. I am also concerned about India because India is a very important and respected global power increasingly so and the Gupta's are Indian by birth. They have a number of family members and businesses and properties there. They have commissioned the building of a R200 million Shivadham Temple using the laundered funds and appear to be continuing haemorrhage funds at an alarming rate which will mean South African authorities can never repatriate them. For example they recently funded a wedding for two of their sons of different brother – Gupta brothers reportedly costing R427 million in
20 June 2019 just a few months ago. So that is another R400 million down the drain which could have spent on health care or schools or houses in – and other real needs in South Africa. And although I understand the Gupta's have invested – have been investigated by the Indian authorities no funds have been repatriated by the Indian authorities back to South Africa. Well I think they should. I think they should start

doing that and not before time before more of it is – is spent and can never be repatriated.

ADV PRETORIUS: You have touched on the proposals that you summarise in paragraph 36 and financing of law enforcement agencies and you refer to the United Kingdom example. You will deal with these issues in more detail in the second part to which we are about to come now. But perhaps the example of the UK serious fraud office investigation in Tanzania, Tanzania.

LORD HAIN: Yes I – we touched upon this Chair earlier on, the
10 Tanzanian example and as I mentioned then the serious fraud office did investigate Standard Bank PLC's activities in Tanzania and it led to 7 million US Dollars being paid in compensation to the government of Tanzania and over 25 million US Dollars paid in fines and [indistinct] of profits. So there was in this case penalties – there were in this case penalties extracted, fines paid and that is an example of what can be done if you had systematic international cooperation into financial crime. Just one example of what could be you know potentially hundreds if not thousands more.

ADV PRETORIUS: If we may move then to paragraph 38 and part 2 of
20 your submission Lord Hain. You have by way of the examples tabulated in your statement highlighted the problems, categories of problems, the nature of problems, individual issues that require to be addressed and in part 12 you make certain submissions for the consideration of the Chair as to how these could be addressed particularly on the international stage.

LORD HAIN: Yes Chair. I describe it in paragraph 38 and some may wonder why I use this term. As given that international actors has been crucial to this – this corruption, money laundering and state capture it could be – the South African case could be used as an opportunity for the international community including the businesses and banks concerned to learn from the failures that they were responsible for and the weaknesses in the global regulatory system to make changes soon and to enforce those changes. So some of the changes that I – in fact all of the changes I have suggested. So this terrible episode could be
10 an opportunity but for that to – for that to happen we would – we need less warm words and more firm action. And we have seen plenty of warm words including from my own government in the UK and I will come to that later on if I may? But very little firm action.

ADV PRETORIUS: Yes. And as a broad category of approach you deal with a need for proactive cooperation in paragraphs 39 that appears to be cardinal to your submissions. Perhaps you should place that on record if you would?

LORD HAIN: Chair it is indeed. What I want to see and why I have suggested this quite a long list of recommendations for your
20 consideration is we should be putting in place a transparent international environment where there is proactive cooperation between banks, professional enablers, companies and governments and where the perpetrators of corruption and money laundering are no longer able to – to slink and hide in the shadows. That clearly is not happening now. It clearly did not happen in the case of the – the state capture of

South Africa and it needs to happen from now onwards. And again I am tired of lip service being paid to this including in the UK Parliament when I have raised the matter. Oh yes we totally understand and we are very concerned and all these civil service drafted words that Minister – Ministers utter no doubt with some sincerity. But actually nothing happens and I want to see something happen as a result of this that stops it ever happening again otherwise it will happen again. Possibly in South Africa, possibly in another jurisdiction.

ADV PRETORIUS: Under the rubric then Lord Hain of as you term it
10 proactive cooperation between banks, professional enablers, companies and states you deal specifically in paragraphs 40 and 41 with banks and professional enablers in general terms and then you deal with specifics in paragraph 42. Is there anything you need to add perhaps highlight one or two issues that we have spoken about in paragraph 40 and 41?

LORD HAIN: Just very succinctly I hope Chair to simply say that within
20 the private sector, the banks and the professional enablers I mean by that the lawyers, the auditors and so on they have the most significant role to play in combating international crime. I have alluded to this point earlier on. But I think it should be a real source of shame for the world's leading economies and banking institutions and professional enablers that they have been re – conniving and facilitating these corrupt practices. And by corporates that are headquartered in London, in New York, in Delhi and Shanghai for example. And I just make this point too and I feel this myself and I guess you might too Chair that the

average honest citizen on modest or medium income has to jump through all sorts of hoops and time consuming frustrating bureaucracy to open a bank account or to move money just between relatives or you know whatever it might be of a legitimate kind. Booking a holiday, a foreign holiday or whatever it might be. They – we are all put under stringent observation and have to jump through stringent multiple hoops but then when it comes to money laundering and criminality on this huge scale they just – a blind is turned to the Gupta's and their cronies and allies on a gargantuan scale and I just feel that the international
 10 institutions from governments to banks and corporates really ought to answer for this. Why they have not adopted the same stringent curbs and checks and transparency they apply to us as ordinary citizens on the criminals and the looters.

ADV PRETORIUS: In paragraph 41 Lord Hain you deal with an important feature of the modern banking system in fact the modern world and that is the digital footprint which is a – in itself a technological enabler of the problems you have highlighted. Do you want to deal with that please?

LORD HAIN: If I may? I am not an expert in this field Chair but as I
 20 understand it all the money that is moved around the world leave a digital footprint because that is the way it is moved electronically in a digital fashion. It is not like the old way where you – you know you stuffed brown paper bags full of money. That may have happened and may even be a matter for your consideration in the commission but broadly speaking the billions that are moved around the world every

day are not in brown paper bags stuffed full of cash of various currencies. It is digitally and a footprint is left and therefore I think that although I have been highly critical of the HSBC, the Standard Chartered, The Bank of Baroda's and the McKinsey, KPMG, Hogan Lovells Bain and Co, SAP and so forth. Actually what I am appealing to them now is to actually assist including yourselves if you judge this assistance you would encourage as a commission but more particularly the enforcement authorities, the governments and the regulatory authorities and specifically the South African ones to – to recover the
10 money, identify where it went. Because they can do it. There is no excuse given the digital footprint that it leaves for them not to do it.

ADV PRETORIUS: Lord Hain in paragraph 42 and following you deal with one of the issues raised by you earlier this morning and that is the frequency of the problems encountered in understanding who precisely owns a particular company be it a shelf company – shell company or direct ownership of assets and you make some recommendations in that regard. Do you wish to deal with that please?

LORD HAIN: Please. Yes Chair. I recommend the creation in South Africa of a public register of beneficial owners with the next six months
20 and for you to consider that recommendation and the strengthening of the audit program of banks and professional enablers due diligence responsibilities in South Africa.

By ultimate beneficial owners I mean and why a register would be important, because this would ensure and I refer to - I am not sure which document it is - but the - one of those that - that I

deposited. I refer thereto what I mean by this which would be transparency. A UBO Register. An Ultimate Beneficial Owners Register.

That is to say they person who or the persons who ultimately own the entity. Even if their - as I described it before - their identity is shielded through a series of buffer companies in between.

ADV PRETORIUS: For record purposes Lord Hain may I refer you to the folder QQD.

LORD HAIN: Indeed.

- 10 **ADV PRETORIUS:** Behind the first divider you there have included a note on the concept Ultimate Beneficial Owners. Either for your reference or simply to record that that is your note.

LORD HAIN: That is my note Chair and it refers in particular to paragraph 44, but I think it would be a very useful incredibly useful step towards transparency. In that it - it would ensure transparency around ownership in relation to Government contracts specifically. It would also assist in determining whether a company or its owners have the appropriate experience to carry out a project which a state arm is contracting them for.

- 20 I mean the Commission I would submit need look no further than the Estina Dairy Farm example to see that the ultimate owners behind the project - the Guptas - had no dairy farm experience at all and were plainly inappropriate for the funds allocated for that project and up until such - the time that such a register is created could I recommend that the Commission consider and the South African

Government adopts a policy that it will not engage with companies that are unable or unwilling to demonstrate who their ultimate beneficial owner is.

If the companies have nothing to hide then they will have nothing to fear in this regard. So that is something that could happen immediately. A policy as opposed to any statutory regulatory steps that would be needed to establish ...

CHAIRPERSON: Hm, hm.

LORD HAIN: A register.

10 **ADV PRETORIUS:** Of course our own Treasury Regulations may already require that or something similar and then it is a question of enforcement rather than a creation of a new legitimate framework of requirements, but that is a matter that we can look in - in more detail. The point is that the ultimate beneficial owner of any entity with - with which the state does business as it were should be known.

LORD HAIN: It should indeed be known and immediately transparent.

ADV PRETORIUS: Yes.

LORD HAIN: Especially when getting a public contract Chair.

ADV PRETORIUS: In that same divider - EXHIBIT QQD - Lord Hain in
20 the first portion of that exhibit. You deal with shell companies and you deal with the concept of ultimate beneficial owner. You also deal with unexplained wealth orders, but that we can come to in due course.

LORD HAIN: Indeed Chair.

ADV PRETORIUS: And then in paragraph 45 you deal with the auditing function and particularly the due diligence auditing.

LORD HAIN: I do Chair. I - I think that and I would recommend that in order for - to ensure that banks and professional enablers are held to account for their risk assessments of customers and transactions. I recommend that there is a program of auditing and the - it - I recommend that the program for auditing the due diligence carried out by these entities in South Africa is improved.

Currently the South African Reserve Bank audits banks on a regular basis under the Financial Intelligence Centre Act 2001 and I reference that in paragraph 45 and the South African Reserve Bank is also responsible. So banks are - the South African Reserve Bank Act of 1989 is also material here and reports on the audits are there - are then published and substantial fines imposed on any non-compliance, but I would like to make an additional point that given the point we have discussed before - the significant role that banks and professional enablers played in facilitating State Capture.

Could I suggest that the Reserve Bank carries out a greater number of audits on these entities? Particularly those that have been identified as not complying with anti-money laundering previously and this is the crucial point if I may Chair. These orders - audits should take place without notice and a random sample of due diligence files in those entities should be reviewed.

That is not the case at the moment, because that would make it difficult for banks and professional auditors to hide - professional enablers to hide their compliance failures and then key findings from the reviews to the extent that they do not assist criminals trying to - to

beat banks controls.

There should be a root cause's analysis and overall score should be made publically available. As should personal undertakings by senior head quartered management to timelines and funding guarantying commitments made by the relevant banks local branch to any critical remediation work, because in this way Chair I would suggest that the public - the public, business and Government can help - be helped to reach decisions about which banks live up to their ethical claims and deserve increased business including from
10 Government, but the important point is unlike what happens at the present time when notice is given of these audit visits.

They - they should take place without notice and obviously only review a bit of information. So that what has been happening I think is that the entities concerned including the banks make sure understandably that everything is spick and span by the time the knock on the door comes from the auditor on the - on the date that they have been notified.

ADV PRETORIUS: For the record Chair at - at your own instance and at the instance of the legal team the whole function of the regulatory
20 authorities in relation to financial transactions is the subject matter of investigation and the product of that particularly auditing whether that takes place privately or as a state function will allow you with respect Chair to consider recommendations in that regard.

You then deal in paragraph 46 Lord Hain with information sharing and you refer to certain entities or institutions private and ...

CHAIRPERSON: We - we back to his main statement. Right?

ADV PRETORIUS: Yes. Paragraph 46.

CHAIRPERSON: *Ja.*

ADV PRETORIUS: You refer thereto certain institutions that exist internationally and their existence and function maybe instructive for the South African experience. In the bundle QQD behind the second divider you have made certain notes in relation to some or all of these entities and you refer to them in paragraph 46. If you could shed some light on what say please in paragraph 46 and following?

10 **LORD HAIN:** Yes Chair. I do. This is - these - these are recommendations for the - for the South African - South Africa to consider and for your Commission Chair to consider in establishing bodies that have been established elsewhere including in the United Kingdom and have operated quite successfully.

Perhaps it might be easier, because it is quite complicated. That is the reason I submitted this additional note that you have referred - that - that Advocate Pretorius has referred to. If I take for example the - the UK's Joint Money Laundering Steering Group. Some unpronounceable acronym. JMLS or whatever it is.

20 JMLSG. Joint Money Laundering Steering Group and I recommend that South Africa establishes this within the next 12 months. If I briefly describe what it is. It covers policy and good practice. So it consists of all the - the leading UK trade associations in the financial services industry.

The Association for Insurers, the Association for Foreign

Banks, UK Finance. There is a whole list of members that - that you could - there is a link in - in the note which could be identified and the - the focus is really to spread good practice in banks in countering money laundering and give practical assistance in interpreting the UK Money Laundering Regulations and it publishes industry guidance and regularly reviews the guidance to make changes and additions as required and it provides regular updates on various money laundering regulations enforce.

10 So that is what it is and I - I recommend that that is done to allow - what it particularly does is allow you know it allows good practice basically and then there is the question of implementing legislation to allow voluntary sharing of data between banks where there suspicion - suspicion of money laundering.

I mentioned Chair earlier on this - this obstacle of client confidentiality which is always cited as it was by Standard Chartered as I addressed earlier on this morning. It is always cited client confidentiality as an obstacle to transparency and sharing of data. Not with the public, but between the banks and I think that we need to establish a - a body.

20 We need to have legislation that allows that voluntary sharing. We then need to consider the establishment of another body which replicates another UK institution. The Joint Money Laundering Intelligence Task Force - JMLIT and that should be done within South - in South Africa within the next 12 months if the Commission so recommends and JMLIT is a body that is really about enforcement.

Whereas the Joint Money Laundering Steering Group is about policy and good practice recommendations. This is about enforcement. So it is essentially a partnership between law enforcement, the Government and the financial sector including the UK agencies, the Financial Conduct Authority, the National Crimes Agency, the Serious Fraud Office and so and it has got over 40 financial institutions including HSBC and JP Morgan and Royal Bank of Scotland and so on and its focus is to share public private information regarding money laundering and wider economic threats and it allows banks to work with
10 law enforcement to detect money laundering threats by sharing - and this is crucial - sharing the confidential information that they have as separate banking institutions with other banks between each other and with the regulators and they can do that under this initiative and clearly in the South African State Capture saga that did not happen or it could have been spotted earlier and something dealt with it.

I mean it also improves the financial institutions commitment and prioritisation of risks and strengthening bank systems and controls and this sort of law enforcement can help establish the comprehensive understanding of a case they are investigating because to use a phrase
20 - I think a South African phrase.

They can join the dots between money laundering and money laundering attempts at different banks and that is not happening at the present time and that was one of the reasons why the Guptas in particular were able to get away with - with what they did.

ADV PRETORIUS: You will recall Lord Hain that we discussed your

concern with time periods which you mentioned in relation to a number of the suggestions you make and I understood you to be of the view that there is some urgency particularly in relation to the repatriation of funds or the recovery of funds.

LORD HAIN: Yes. I mean I think there is some urgency in establishing these new bodies - if the Commission so recommends, because we do not know whether this is continuing at the moment. I mean all the focus has been on the Gupta brothers and their patron former President Zuma, but you know I think people in business and in the
10 financial sector in South Africa well placed senior people tell me that the problem is continuing amongst others.

That there could be a tendency and that is for you in South Africa to assess rather than me, but there could be a tendency to say we deal with the Gupta problem and then we have dealt with the whole thing and actually it is just - if I could use the phrase - perhaps the largest iceberg in a lake of many icebergs of corrupt practice.

So I think there is a lot of urgency in - in this and that is why I have suggested those - those timeframes. On the question of asset recovery Chair if that is what I am being invited to address at the
20 present time. Is that correct? I am and I - I refer to this only in - in outline in the - in the notes that have been referred to in - in the exhibit.

My concern is that the South African authorities, the Government and its agencies are not pursuing asset recovery with the urgency that is needed and this money is being spent. I quoted the

example of the wedding by the Gupta sons. That is a lot of money - R400 million.

That is disappearing and it is being moved around different jurisdictions and although you know I think I am not the first to observe that the South African enforcement and regulatory authorities - the National Prosecuting Authority for example which at last is under good leadership are sort of submerged by the pressures and there is a capacity issue, but there is also the option of using other means to recover these assets and I give the example for - for instance of the
10 Nigerian Government.

It is through civil action in the English Courts by the - the private agencies that it has - it has commissioned against Shell, against the Italian Oil Company ENI and against the Global Bank JP Morgan. It expects to recover \$1.2 billion - American Dollars for the Nigerian Government from money which was stolen. I think mainly in the oil sector.

Now they are using - they are using a method which is that the private agencies concerned working for the Nigerian Government they cannot do this without the Government's authorisation are then
20 recovering the assets. They - they do not require any upfront fee. They pay a negotiated agreed percentage or amount of what they recover and I understand that they have already recovered for the Nigerian Government such - something like \$US70 million which is multiple hundreds of millions of - of Rand already out of the 1.2 billion that they are targeting and I - I think the Commission might want to

consider that example to as it were jog the - the elbow of the Government and the - the enforcement authorities to - to see whether this might be an option for them if their own resources - as was the case in Nigeria.

Nigeria is not - is not dealing with the legacy particularly. Although there is widespread corruption in the country that is well known particularly dealing with the State Capture problem that South Africa has faced.

ADV PRETORIUS: Lord Hain just to get back to your recommendations
10 regarding steering groups and information sharing. You make the point in paragraph 49. It is - it is not an obscure reference that you make there to the point. That whilst based on the digital footprint of records in financial transactions each institution separately will have information.

It is only when this information is collated by joint action and cooperation and information sharing that maximum use can be made of this information.

LORD HAIN: Indeed Chair. The - the digital technology which facilitates all of these problems is actually deployed through systems
20 that the international banks and the professional enablers have and so as I described it in paragraph 49. I think the banks and the professional enablers are therefore the first line of defence when it comes to corruption and a private/public sector partnership I think is integral to reducing financial crime.

It is not just a question and I would suggest that the

Commission focuses on this matter. It is not just a question for the official state regulators or enforcement authorities desperately under resourced and with the limited capacity that sadly they have in South Africa. Not least as a result of the - the decrease of State Capture.

They need the - the private sector - the financial sector and the professional enablers to come to their assistance. Share information and stop - they must stop hiding behind the confidentiality or the limits of their current reporting systems and work collaboratively and proactively to share useful data and intelligence on a confidential
10 basis of course with South Africa, global and regulators and enforcement agencies.

I think that should be their duty and they clearly have not been fulfilling that up to now.

ADV PRETORIUS: In paragraph 51 Lord Hain you speak of the need for information sharing to take place in addition within institutions, within banks and within professional enablers and in this context you deal with the concept of passporting as you described it there in paragraph 51. Would you explain that to the Chair please?

LORD HAIN: Indeed Chair, because these banks and professional
20 consolidators - sorry - professional enablers consolidate their data across their organisations. They - they should be doing that. They are not doing that at the moment. That means information should be shared across different product departments and geographical areas and then that will help prevent passporting - and I will explain this.

Whereby criminals gain access to the financial institutions

multinational network through a less regulated jurisdictional product area. We touched on this earlier this morning, but I do not believe that banks and professional enablers should be allowed to claim ignorance of the activities of branches placed in a jurisdiction in a bank's multinational operation where anti-money laundering policies and procedures are not as rigorous as for example in South Africa or - or Britain.

I do not think that they should be able to claim ignorance of this or where there a kind of peak banking and corporate structures and
10 again we need to look no further than the activities of the Bank of Baroda. The South African branch of it. For example in paragraph 13 of my submission which we have touched on earlier.

For example how a local bank branch was exploited to gain - here in Johannesburg - was gained - had to gain - exploited to gain access to the global bank's infrastructure. Perhaps if I - if I just say I do not think I have covered this this morning, but if I have perhaps I can ...(intervenes).

ADV PRETORIUS: Not - not in the detail that you ...

LORD HAIN: The passporting question.

20 **ADV PRETORIUS:** Are dealing with at the moment and perhaps it would be instructive. We have an example of a bank saying that what happens in another jurisdiction is at least to a degree inaccessible to us and I think that is - if I may say the point that you are making that a bank should not be enabled or allowed or permitted or should not at least say that that happened in another jurisdiction and therefore it is

beyond our control and jurisdiction.

LORD HAIN: Yes Chair. I mean I touched on this earlier in respect of my rebuttal of Standard Chartered's response, because part of that response was saying that Johannesburg branch has no locus in Dubai with its Dubai branch of the international Standard Chartered Bank. Even though the money left the Johannesburg branch into the Dubai branch and went through that common pipeline that they share as it were - digital share and this - this issue or passporting. I think that they have got to ...

10 **ADV PRETORIUS:** If I may interrupt. I apologise Lord Hain.

LORD HAIN: *Ja.*

ADV PRETORIUS: Chair the note is in the last divider in EXHIBIT QQD.

CHAIRPERSON: That is in QQD?

ADV PRETORIUS: Yes. Behind the last divider Chair.

CHAIRPERSON: Okay. Thank you.

LORD HAIN: I just - I hope Chair if I may ask this. That my private email which is on that is not disclosed when - when this is before the Commission in any public ay.

20 **ADV PRETORIUS:** We will delete it assiduously.

LORD HAIN: *Ja.*

CHAIRPERSON: We will take care of that.

LORD HAIN: Right, but ...

ADV PRETORIUS: That is not to detract from the evidence that you are giving ...

LORD HAIN: No. No, no, no.

ADV PRETORIUS: Regarding transparency.

LORD HAIN: So - so I am making a plea for banks and professional enablers to consolidate their data across their own boundaries and organisations and that will prevent this phenomenon of passporting whereby criminals gain access to a financial institution's multinational network through a less regulated jurisdictional product area and banks and professional enablers should not be allowed to claim ignorance of the activities placed - of the activities of branches placed in a
10 jurisdiction elsewhere in its multi - multinational operation where anti-money laundering policies and procedures are not as rigorous and that is exactly what Standard Chartered have done in their response to the - to my evidence to the Commission.

They have said it is nothing to do with us. Many of the services they need are actually complicated and best provided through a large or global bank. For example opening up of offshore trust accounts. So the truth is as I see it this is one international bank and instead of the left hand in Johannesburg not knowing or claiming not to know what the right hand in Dubai is doing they should be both - accept
20 their responsibilities and that clearly is not happening and you know what - what happens is that in the case of the Guptas and other criminals they do not go to the headquarters of the bank concerned which might be - have more stringent compliance procedures where they are more experienced or where in the case of London headquarters those you know anti-money laundering checks maybe

quite good.

What will happen is a criminal opens a basic account in a part of the bank that has not rigorously implemented anti-money laundering procedures and where checks for example in a high risk country where there is poor infrastructure or poor and use that to passport the funds through much more complex banking arrangements and because a banking headquarters can say it has relied on its subsidiary to perform these anti-money laundering checks and keep them up to date and then if anything goes wrong simply blame the local
10 bank - the local branch of the bank.

That is not acceptable as far as I am concerned. The only way to make the global banking system work properly is for banks to control internal passporting and share best practice and information much more freely also with other banks and with regulators. I mean what is happening here is the criminal is - the criminals are clever.

They are always ahead of the game and the banks must be cleverer still and try to get ahead of the game as well and operate much more seamlessly across their - their - between their international different global branches in different jurisdictions. Rather than
20 pretending that they are separate. Even though they are an international bank that permits funds to move between their branches.

ADV PRETORIUS: And just to go back to your own proposals in the submissions, the creation or participation in the institutions that you've mentioned will facilitate this, not only within financial institutions but between financial institutions.

LORD HAIN: Indeed that is correct Chair it's not just within financial institutions but between and they just don't do this enough at the present time. So if we take the Gupta example, the Gupta's were laundering money through Bank of Roda they were separately laundering money through HSBC and then thirdly they were laundering money through Standard Chartered and given the evidence and it's before you. They were not talking to each other as far as we know, those banks, with this parallel money laundering going on. If they had been then maybe they would have had a mutual system of spotting it
10 and doing something about it. So that's the point I'm making, effectively the Guptas and other criminals are able to just choose a bank and then take their illicit funds through its global networks, then they go to another bank/branch and do the same thing then they go to another bank/branch and do the same thing and the one doesn't or claims it doesn't know what's happening in the other and that's just not good enough.

ADV PRETORIUS: You refer somewhere in the statement, Lord Hain to best practice and I understand that to be a reference to the establishment and enforcement of international best practice on an
20 international scale.

LORD HAIN: Yes I do refer to that Chair and I've referred to the Joint Money Laundering Intelligence Taskforce [indistinct] because in paragraph 55 for example it's – because it promotes the exchange and analysis of information in relation to money laundering and wider economic threats, and this is important, since its inception it supported

and developed over 500 Law Enforcement investigations and is directly contributed to over 130 arrests and the seizure or restraint of over 46million UK Pounds Sterling, that's a considerable amount, that's many hundreds of million rand. So it's had results and I think that as in the UK if South Africa formed such a new body of an appropriate kind in the country it should be comprised of both local banks and international banks because corruption and money laundering occurs through both, it goes out through local banks and the local branches of global banks. So they all need to be involved in this new body and if it can be as effective as it has in those cases – in the 500 cases of investigations in the UK then I'm sure it can be in South Africa as well.

ADV PRETORIUS: Are you aware of any cross-border cooperation between different financial institutions or are there any suggestions that you might have in that regard?

LORD HAIN: Unless...[intervenes].

ADV PRETORIUS: In other words across national boundaries rather than solely within national boundaries.

LORD HAIN: Well there is the financial action taskforce which I refer to later on in my evidence in paragraph 76 and 77, Chair if that's what being referred to and that's, I think that's been carrying out an investigation in South Africa at the present time or certainly recently I think it's due to report next year but although it's a member – it has in membership the financial action taskforce if I at this moment take this opportunity to just describe it for the benefit of the Commission. It's an inter-governmental body with 37 members...[intervenes].

ADV PRETORIUS: I must apologise for taking you out of sequence.

LORD HAIN: Not at all.

ADV PRETORIUS: That FAT it was also referred to in QQD behind the second divider on the second page of that section – no on the first page of that section under the Head Financial Action Taskforce. If you don't mind then to deal with it now?

LORD HAIN: Chair as I say this is an inter-governmental body with 37 member countries and two regional organisations and there is a link in the note I provided to its membership and its focus is combating money
10 laundering, terrorist financing and other related threats the International Financial System. It's a policy making body not an enforcement one as such which – its objective is to bring to a national legislative notice the regulatory and legal reforms that should be implemented to keep up with the criminals and the terrorists and it's developed a series of recommendations which are international standard recommendations for combating money laundering and the financing of terrorism and the proliferation of weapons of mass destruction and it conducts independent country reviews to provide public recommendations and criticisms and they often lead to changes
20 or pressure for change in those countries and as I say, it's conducting a inquiry into South Africa at the present time and I don't know exactly next year it's due to report but it may be worth making contact to see if it's findings and likely recommendations would be of interest to the Commission, Chair.

ADV PRETORIUS: If we may then go back to the text of your

statement, Lord Hain, in paragraph 53, you've touched on issues raised there and you refer in particular to the UK Joint Money Laundering Steering Group, you have referred to that.

LORD HAIN: Yes I referred to it and described it already, suggested that it is also established here Chair in South Africa but the guidance that it's issued is reportedly reduced the significantly – sorry enhance the ability of those in the financial sector to comply with the laws and regulations because it's written by those who have an in-depth knowledge of how the sector works on the ground. So because it's a
10 body that involves the financial sector, they have been able to provide their expert technical advice and it's actually been working quite well and I also suggest to buttress that, that there's legislation permitting the voluntary sharing of data between banks where there's a suspicion of money laundering and that should be implemented in South Africa as I recommend in paragraph 54 as has occurred in other states, for example, the UK's Criminal Finances Act 2017 introduces voluntary information sharing between regulated entities such as banks and professional enablers, when they've notified the UK's National Crime Agency of a suspicion of money laundering. So where there didn't used
20 to – it didn't used to be felt that they could voluntarily share information across their entities for the client confidentiality reasons, principally this legislation, the 2017 legislation Britain does permit that and it permits them to communicate when there's a suspicion and collate relevant data held by the different organisations so they have a more comprehensive overall picture of what is going on and that in

turn, enables regulators to sort of better allocate resources and make a better assessment, a more accurate assessment of what action needs to be taken. So it seems, it's early days yet, but it seems to be a positive benefit in the UK and it may well be worth South Africa looking at as well.

ADV PRETORIUS: Yes, for the record once again, Lord Hein the South African Legislative Framework does provide for an obligation on banks to report to authorities suspicious transactions as they are referred to quite what happens once that report has been made is a
10 topic that the Chair will be examining in due course but I think the point here is that in addition to an obligation that might or might not exist upon a bank or other financial institution to report to the authority you're suggesting, am I right, that there be information sharing permitted between financial institutions to enhance that reporting obligation?

LORD HAIN: Indeed Chair that's voluntary information sharing permitted in real time because inevitably the regulatory authorities or the enforcement agencies come afterwards and if there was this legally sanctioned voluntary sharing information, indeed that it was urged
20 under the law that this were done, you might be able to nab these guys in the – you know nab this problem and nib this problem in the bud to track down what was happening in time to stop it and prevent the looting which we've been concerned about here.

CHAIRPERSON: Well with regard to information sharing it seems to me that one advantage it would have is that whereas if a client acts is

dealing with a particular bank and that bank sees or becomes suspicious of a single transaction but not deeply suspicious but they have some question marks and then it takes six months before there is another suspicious transaction it might take long before that bank says, no we need to do something with regard to this client. We must look much more deeper into this, whereas if the same client is using three or four banks using this one bank for this suspicious transaction and another bank for another suspicious transaction and another bank for another suspicious transaction and they all share this information at
10 the same time, they could act much more quicker, all of them to say, it can't be that this is innocent, why – what's happening. That's the kind of situation which I were- I think probably could be very helpful in getting the banks to act much more expeditiously.

LORD HAIN: Absolutely Chair that's precisely the point that there – not only would there be, as it were, notification process to the relevant agency, statutory agency which I guess happens at the present time but sometimes only retrospectively but that this would be a happening in real time and it would be enhanced by common sharing of data in precisely the way that you've described Chair.

20 **CHAIRPERSON:** Thank you.

ADV PRETORIUS: And of course the question arises as to whether such legislation perhaps consideration should be given to making information sharing in certain circumstances compulsory rather than voluntarily but that's a matter beyond our...[intervenes].

LORD HAIN: Indeed certainly beyond – well beyond my pay grade that

one.

CHAIRPERSON: Well I was going to ask you, Lord Hain, whether you had a particular reason for choosing that the information sharing between banks should be voluntary or whether that's just what came to your mind, whether there was a special reason why you were thinking like that, I'm particularly thinking of a suspicious- where a bank is suspicious of a transaction or maybe it could be, as you see it, there could be a level of suspicion where the sharing of information should be voluntary and the more serious or the stronger the suspicion is then
10 the more likely that it should be compulsory – the sharing should be compulsory, I'm not sure but I wanted to find out whether you had a special reason for saying it should be voluntary?

LORD HAIN: Well I think Chair that – and it's a very important point that you raise, I think it should be a requirement, a statutory requirement to share voluntarily, information. So that it's done, my point about, in real time because I mean they have, banks, international banks, they have monthly or weekly reports to their management in relation to their assessments of money laundering any risks to that effect. They do this themselves, you could argue not very
20 effectively in this case but they do it themselves so I think they should be required to share that with the South African authorities and required to voluntarily share it rather than doing it through a sort of rigid bureaucratic route with each other, I think that's the point. It would be a daily, as I see it and I'm not a banker and I'm not an expert is this field but a daily automatic requirement that they think right,

there's something I'm a little worried about here I think I'm going to tell the neighbour bank just in case there's bank accounts that they might have from the same individuals.

CHAIRPERSON: Yes thank you.

LORD HAIN: Perhaps the general point I might make at this stage, Chair, which I make in terms in paragraph 56, is I don't think there's any good reason for foreign banks to be better informed of the financial crime risk they present to South Africa, than the South African Regulatory and Enforcement Authorities themselves and unless they
10 are more transparent and unless they share their information more readily they will know of financial crime happening or have suspicions about it well before the Regulatory Authorities and that doesn't seem to be right to me.

ADV PRETORIUS: You've then dealt with, Lord Hain, the issues raised in paragraph 55 and 56 unless there's anything you wish to add in that regard perhaps you could explain under the head, Self Policing the steps that you think should be considered in that regard?

LORD HAIN: I would, if I may Chair, then move to recommendation in paragraph 57 where I suggest additional penalties of a statutory kind
20 for banks and professional enablers for failure to self monitor through the removal or suspension of banking licenses and a senior Manager's regime and I'll explain what I mean by that. So in addition to the banks and professional enablers sharing data between themselves in the way that we discussed, they should make much better use of the data they have by systematically, fastidiously even ensuring that it's utilised to

identify potential criminal activity. They should take proactive responsibility for monitoring their inherent standing on the money laundering regulations and internal anti-corruption policies rather than rely on regulators to oversee and intervene when legislation's been breached and crimes have already been committed. So for example, in paragraph 58 Chair, I mention what I describe as the Bank of Baroda's wilful indifference to the Gupta's shady dealings, only closing their accounts very late in the day after the billions have already been laundered through them. That's a shameful example of complicity in

10 State Capture corruption and criminality and the bank of Baroda, in my view, should have been punished for its actions, well it hasn't been it's sort of got some public opprobrium for it but it hasn't actually been punished, it should be and that's what I mean by the penalties, additional penalties that are needed and I then go on in paragraph 59 to describe, you know, other changes that might be needed when...[intervenes]

ADV PRETORIUS: Before we get there, just to refer back to the example that we discussed earlier this morning Lord Hain, that perhaps it's too late when the Law Enforcement Agency comes knocking on the

20 door that the remedial steps of detection and prevention should be compulsory before that.

LORD HAIN: Indeed Chair, I mean by the time the regulators and the Enforcement Agencies come in and knock on the door, the horse has bolted, the money is gone and that's why I keep coming back to the banks and professional enablers both culpability and responsibility here

to stop the horse bolting because otherwise they are the ones who have enabled it to bolt in that way before anything can be done about it.

ADV PRETORIUS: You wanted to deal with paragraph 59 Lord Hain.

LORD HAIN: Chair if I may yes, because I also think that to encourage the really strict adherence to money laundering regulations banks and professional enablers should face additional sanctions on both an organisational and individual level in addition to those already included in current anti-money laundering legislation. On an organisational level licenses should be immediately stripped from banks
10 if they consistently fail to meet anti-money laundering standards expected and licenses should be automatically suspended pending investigation if it is suspected that they facilitated money laundering or corruption. I think this would act as a powerful deterrent to them not to repeat or replicate what happened with the Gupta's and I should think many others. On an individual level, and this is the senior Manager's regime point that I referred to earlier, on an individual level I suggest for your consideration the introduction of a senior Manager's regime whereby senior Management is personally responsible for the failures of their company over money laundering and corruption. So it's not just
20 the corporate but it's the individual managers and punishment should include the commission to work for any regulated entity in this field such as a bank for example, fines and perhaps even prison for the most serious offences. I think that would encourage management to take a much more active role in ensuring that the institution adopts the necessary stringent anti-money laundering procedures and policies

rather than simply seeing that this is a corporate responsibility which may result in a fine on the corporation but actually it's the individual manager whose held to account, could lose their job, could face criminal penalties as a result of that corporate failure that they might themselves have been responsible for.

ADV PRETORIUS: In paragraph 60 and following, Lord Hain, you deal with corporates and what perhaps they might consider by way of joint cooperation between corporates in order to deal with the issues you've raised in your submissions and you refer to the extractive industries
10 transparency initiative that also is referred to in your notes in Exhibit QQD, if I'm correct, it may not be.

LORD HAIN: I'm just trying to find it if I may Chair.

ADV PRETORIUS: You deal with that on page three behind the first divider very briefly but perhaps you should just rely on what you say in paragraph 62 which is more explicit.

LORD HAIN: Yes, I do deal with it on page three but I think paragraph 62, Chair is much more detailed. What I'm recommending here is the establishment of standards for good governance based on the Extractive Industry's Transparency Initiative known as EITI. It's a
20 global standard for good governance of businesses operating, particularly in the mining, oil, gas and other extractive industries and it promotes greater transparency and accountability amongst industry players to combat corruption and money laundering and these industries have been notoriously vulnerable to those problems. So those that sign up to it, have to adhere to EITI standards to publically

disclose information from the point of extraction right up to how the public is benefited. So it's a kind of, good practice standard that they sign up to and then government companies, civil society expected to collaborate and cooperate to promote greater understanding of resource management and preventing proper exploitation of resources in countries, for example South Africa and so EITI members, for instance are required to disclose information on how their sector is managed so that there is an understanding of the laws and procedures for the award of production licenses and this information should include

10 the process for awarding a license information about the recipient of a license and any other issues that are relevant to the tender framework. The point is the disclosure, this level and type of information makes it difficult for licenses to be awarded outside the established framework without attracting criticism and challenge from bidders and the public but the additional point I make Chair in the following paragraph 63 is that it's clear from the South African State Capture experience to me, and I hope more widely accepted that the extractive industry should not be the only business areas that are subject to these kinds of codes of practice because although they've been historically vulnerable to

20 corruption they're not the only ones and as I understand it the international communities in the process are considering establishing EITI equivalents in other vulnerable business areas that could benefit from increased transparency particularly the State procurement contracts which have been a big problem in South Africa and I detail there, in paragraph 63 the kind of issues that would require a level of

visibility around a successful tender party which would make it easier for the government or somebody else to better understand who they're doing business with and whether that person poses a financial crime risk because, again this problem came up time and time again with the Gupta's. So I'm suggesting that South Africa joins the EITI initiative as a matter of priority and for the Commission to consider that to tackle corruption in the extractive industries but more broadly as well rolled out to other sectors so that other appropriate business areas are subject to those kinds of codes of practice in South Africa as well.

10 particularly, if I may say so State owned enterprises where the problem is being rife of State Capture.

ADV PRETORIUS: In paragraph 65 and following you deal with a new issue Lord Hain, perhaps to take us up to the time for the long adjournment you wanted to preface what you say in paragraphs 66 and 67 with a general comment regarding the topics you deal with there.

LORD HAIN: Yes, Chair in this section I'm dealing with black economic empowerment and I'm very strongly supportive as I imagine the Commission would be of the principle of black economic empowerment, very strongly supportive as part of the transition from
20 the historic discrimination under a white owned and controlled economy during apartheid but what is true, I'm afraid, is that there is increased protection, I believe necessary in order to ensure that the legitimate and very important aims of BEE are not undermined and distorted by corrupt manipulation by a few corrupt individuals including the Gupta brothers with their bribery and unfortunately in recent history a lot of

the contracts or State owned enterprises were awarded to BEE enterprises under that label that did not have or intended to obtain the requisite capability to perform those contracts satisfactorily nor indeed to further the aims of the black economic empowerment movement.

In other words they were perverting the important and valid objectives of the BEE movement and policy, government policy which I support, they were manipulating and perverting it, so I identified for example earlier on in this document in part one the Gupta businesses and those related to the Free State that were often claimed to be BEE's
10 but which did not deliver on their promises or empower black communities at all, so they were a convenient mechanism for looting rather than to further the very important objectives of the BEE policy and the communities themselves didn't benefit as classically in the Estina Dairy Farm example which is a kind of flashing lights example of this problem.

So I am suggesting that there should be better regulatory regulation and promotion of the BEE program beyond the general recommendations that I have made in this area for businesses to ensure that actually the benefits really do accrue to the people, the
20 communities, the black communities that are, as is the intention of the policy.

So I think that in addition to the transparency of ownership and information sharing issues which we touched upon so far in my evidence I think there should be increased transparency around whether a black economic empowerment organisational party first of all

has a relevant track record in the field concerned, secondly meets basic up-skilling requirements to perform a contract, specifically that they do actually hire and train fresh black employees to the number and qualifications required to deliver that contract competently and thirdly satisfactorily perform their contracts against key performance indicators including final sign-off on completion.

The number of employees retained by businesses claiming to operate as BEE enterprises should also be carefully recorded, verified and disclosed as those that have exploited the BEE initiative usually
10 create a shell company, in other words a front company posing as a BEE company but actually having very few employees, many fewer than will be needed to deliver the contract, solely to win the contract and then to loot as they have done, so in other words they are distorting and perverting the admirable and vital objectives of BEE and I think that additional transparency is needed in the form of also regular public updates through the Department of Public Enterprises website and a whistle-blowing hotline for the reporting of breaches, and as I say perhaps I would conclude this point if I may Chair, obviously to all of us I'm sure and to me as well the BEE program is really important for the
20 future of South Africa and it shouldn't be criminally exploited and manipulated by the State Capture individuals as they did over a protracted period.

There should be greater transparency and accountability to ensure that the initiative first of all benefits the people that it was designed to benefit, and secondly the South African people are

provided with the goods and services promised under a State contract, which in many cases under the Gupta's never happened, and thirdly the financial institutions who bank BEE's are scrutinised what's going on much more effectively.

And in that way the press and local communities could identify, if I may describe them as rogue BEE's so that they can't move any ill-gotten rents abroad or passport them out of the country in the way that was so consistently done. It wouldn't be as easy for them to do it.

ADV PRETORIUS: And in that context just one last point Lord Hain
10 you raised the issue that we have dealt with and perhaps we will deal with again and that is the need to identify true beneficial ownership.

LORD HAIN: Indeed, that is absolutely crucial to all of this, the point covered in paragraph 44 and my recommendation for a register and so on, it is really, really important in the BEE area as well.

ADV PRETORIUS: Yes. Would that be a convenient time for the long adjournment?

CHAIRPERSON: *Ja*, let's take the lunch break and then we will resume at five past two.

ADV PRETORIUS: Thanks Chairman and we will finish today.

20 **REGISTRAR:** All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I understand that we are back on TV.

ADV PRETORIUS: For the moment yes Chair.

CHAIRPERSON: Hopefully it will allow us to finish before it interrupts

us again.

ADV PRETORIUS: Yes.

CHAIRPERSON: Let us proceed. Thank you.

ADV PRETORIUS: Thank you Chair. Lord Hain we were at paragraph 69 before the long adjournment where you make some comments in relation to states. You have dealt with some of the issues in that paragraph but do you have anything to add?

LORD HAIN: Only Chairman that I think it is important that states if they want to have good reputations raise their standards on the one
10 hand and collaborate more between each other on the other. Because this cannot be done by on state alone whether it is South Africa or any other country. The global financial criminal network is that it is global and therefore states have to operate on a global basis cooperating with each other and that is not happening frankly to the extent that it – that is should do and it needs to because otherwise this – this will continue.

ADV PRETORIUS: You made the point earlier in regard to banks that even from a technological point of view criminals might be ahead of the game and I take it you making the same point in regard to states within national borders?

20 **LORD HAIN:** I am Chair because it seems to me having looked into this prior to submitting my evidence to you that frankly there is a lot of policy statements and speeches made about money laundering and financial crime. But when it comes to pre-emptive action and ensuring that the safeguards are there, the obstruction walls are there to stop all of this money laundering and financial crime really we are nowhere so

to speak. We way behind the game most governments in the world and certainly in their collaboration. And there are particular villains amongst the different global governments and I think they should be exposed and the – have to account for their backtracking and back marking on this whole agenda.

ADV PRETORIUS: You then deal in paragraph 70 and following with the matter of legislation and you make the point in paragraph 71 that not only is it important to have legislation in place but to ensure the adequate enforcement of that legislation.

- 10 **LORD HAIN:** Yes indeed I mean Chair in paragraph 70 I recommend the proper utilisation of existing legislation South Africa does have for example good legislation in the Prevention of Combating Corrupt Activities Act 2004 and the Financial Intelligence Act 2001. Nevertheless we have had this whole picture of rampant criminality and state capture. So it needs to be properly enforced. There need also to be additional measures to hold public officials to account for misusing information gathered during an investigation. Because there needs to be a much higher standard of accountability. And I mention public officials here because they should be held criminally liable for misusing
- 20 information gathered during an anti-corruption legislation. We have seen this over recent years I am afraid. And although such behaviour is criminalised in South Africa and on a statutory basis the fact that there has been no prosecution of the misuse of information I think is probably more to do though that is a matter for the commission with the hollowing out or the dysfunctionality of South African Law Enforcement

Authorities following state capture then it is necessarily to do with is it were the letter of the law. So I am underlining the point that it is – it is not enough simply to place on statute the necessary legislation. What you have to do is follow that up with proper enforcement and holding public officials in particular to account. And then I recommend as well the implementation of additional measures to recover the proceeds of crime. For example unexplained wealth orders and if I may I will just touch upon that as well as additional funding for regulators. Unexplained wealth...

10 **ADV PRETORIUS**: I am sorry Lord Hain may I just interrupt there. You do deal in the previous paragraph 72 with the importance of the functionality of Law Enforcement Agencies.

LORD HAIN: Yes. I have done – dealt with that and that is – that is where – you know crucial to what I am saying.

ADV PRETORIUS: Yes. I am sorry I interrupted you, paragraph 73.

LORD HAIN: Here I argue for a robust and dynamic set of tools to assist regulators with recovering the proceeds of crime Chair. To do that more easily so that they are more able to monitor and investigate parties that they suspect have facilitated money laundering or
20 corruption. And I would urge that South Africa reviewed all its anti-corruption and anti-money laundering measures and reviews the ones that have been adopted by other states because I think there is lessons to be learnt to hold for regulators to hold criminals to account and recover the proceeds of crime. And I mention the example of the United Kingdom's recently introduced unexplained wealth orders,

UWO's into the regulators task toolbox. Into their – their powers. By
on an altered – unexplained wealth orders I mean these are – people
have wealth that they cannot explain where they come from because it
has been laundered or stolen in some way and it has been hidden. And
you have – UWO's have allowed the – the National Crime Agency in
United Kingdom to seize assets and this is the important point. If the
owner cannot prove that they were purchased legitimately rather than
the regulator having to prove that the owner purchased the assets
legitimately this can be quite draconian a power if it is misused
10 obviously to seize people's houses and so on. But I think in this
context I think it should be looked at by the South African government
and before hopefully by your commission Chair because if you look for
example at the – the Sahara Computers instance. The court files a
recently shown that 98% of Sahara's profits and it was I think a Gupta
owned company ultimately. 98% of its profits came from payments
made by a bogus IT company a UWO and unexplained wealth order
source in other words and a UWO would have been a powerful tool in
seizing the assets that could have been plainly not a purchase as a
result of that company's legitimate activities. So there is home grown
20 example here in South Africa under the Gupta sage where they
manipulated Sahara Computers an associated entity. And if you had
unexplained wealth orders you could have immediately gone and seized
those assets if you know attention was drawn to them. So I think that
introducing them here in South Africa would be you know a very
positive – a very positive move. Let me give you one example

CHAIRPERSON: Well I am sorry Lord Hain talking about unexplained wealth in South Africa we talk a lot about lifestyle audits.

LORD HAIN: Right.

CHAIRPERSON: Would that be the same thing?

LORD HAIN: I guess it would.

CHAIRPERSON: Or unexplained wealth would be wider?

LORD HAIN: I guess it would be analogist and certainly worth comparing it side by side but I think I am right in saying unexplained wealth orders in the UK model are much wider.

10 **CHAIRPERSON:** Yes.

LORD HAIN: And they – they also have the – they have behind them this ability to just seize assets.

CHAIRPERSON: Hm.

LORD HAIN: Which I do not think is the case in South Africa but I stand to be corrected.

CHAIRPERSON: Hm.

LORD HAIN: On – on that point.

ADV PRETORIUS: Chair I was about to raise that issue.

CHAIRPERSON: Yes. Oh you were about to raise it.

20 **ADV PRETORIUS:** We do have the notion lifestyle audit which is a tool that is used by our Revenue Authorities. I under – to detect tax evasion or tax avoidance but I understand you to be talking about a power to reside in the hands of Law Enforcement Agencies as opposed to only revenue authorities. The other difference I think you have pointed out is that the onus in an unexplained wealth order scenario is

for the holder of the unexplained wealth to prove legitimate ownership.

LORD HAIN: Yes so the – for example if I have suddenly built a temple that – use an example at random and I cannot show how I have been able to fund that then that temple could be seized and similarly for a company – a property – a commercial property or a property for example the Gupta's home in Dubai. I think that is the difference. The onus is on you to explain how you purchased this – how you have that asset. Not on the regulatory or the enforcement agency to prove it. So it reverses the burden on proof if you like. And as I say it is pretty
10 draconian or could be especially if misused but if properly used it is a powerful instrument. And I give an example of that this regulation, this unexplained wealth order regulation was used in the UK by the UK's National Crime Agency and they required the wife of a jailed banker who was convicted of embezzling up to 3 Billion Dollars in Azerbaijan to explain how she had come to require certain valuable properties and assets in England worth over 22 Million Pounds and she could not explain that. So clearly there had been ...

CHAIRPERSON: Yes.

LORD HAIN: A serious amount of criminal money laundering going on
20 there.

CHAIRPERSON: Hm. Hm.

ADV PRETORIUS: One would assume that the enforcement of these orders is subject to regulatory or judicial oversight in any event?

LORD HAIN: I would think so. I mean I am not an authority on them but you would expect you cannot have the state just going around willy

nilly seizing assets. I mean that is undermining the rule of law and human rights but in the case of criminality, a suspected criminality I think it is a powerful instrument and certainly so far in the UK I mean it is a relatively recent power I do not think there has been any cries of as it were rights infringements it has just been squeals from criminals who have been targeted in this fashion.

CHAIRPERSON: Yes thank you.

ADV PRETORIUS: A third distinctive factor has been pointed out to me in relation to any comparison between unexplained wealth orders and
10 lifestyle orders and that is that the unexplained wealth order is backed by a threat of confiscation of unexplained wealth, do I understand it correctly?

LORD HAIN: Yes Chair that – that is the case. They can – there is the power to confiscate which is a powerful, powerful power. It is a robust power.

ADV PRETORIUS: Right.

LORD HAIN: And it can be quite brutal on a – on a criminal who has got an asset that they cannot account for. And rightly so in my view because people have got away with blue murder quite frankly in this
20 whole exercise and continue and do so.

ADV PRETORIUS: And it is more then more therefore than just an investigative tool?

LORD HAIN: It is definitely more than an investigative tool. It is an enforcement tool and a seizure of assets tool. So it is – it is a very stringent and potentially enormously significant power.

ADV PRETORIUS: In paragraph 74 Lord Hain you talk about funding of regulators. I presume regulators includes Law Enforcement Authorities?

LORD HAIN: Indeed Chair. I think this is an under – under sort of recognised question that it is one thing to set up regulators it is another thing to give them the statutory underpinning that they need to do their jobs. But it is quite different if they are not resourced properly. I touched upon this morning the question of the you know the National Crime Agency in the United Kingdom saying it needed an extra 2.7
10 billion to do its job which the government refused to give it. But I do think this funding question is crucial and in a country like – I mean the truth is the less funding regulators receive the less investigations will be – will take place and the less funds recovered and the less criminals held to account. That is simply a statement of the obvious. And I think it is essential to increase funding to regulators and in particular to South African regulators and law enforcement agencies to enable them to fulfil their functions. And I realise that in the context of partly caused by this or primarily caused by this systematic looting the South African Treasury is pretty bare at the moment and public spending is
20 under enormous pressure. And I therefore think that a levy on the banks and other entities that have been conduits for this criminal financial activity that they should – they should pay a levy towards these enforcement and regulatory costs. Because I is them that are responsible ultimately. It is not you know the South African Anti-Corruption Agencies that are responsible. It is the failure of the

financial institutions and the professional enablers and he corporates concerned as we have – as we have seen. It is their failure to stop this financial crime and I think there should be levy on them. And the incentive for – to reduce the costs of law enforcement and regulation would be that if they kept their own house in order. If they cleaned their own houses and stop this crime then they would not need – there would be the need for extra levies to fund extra budgets for the costs incurred by policing this crime and bringing it to – to heel. So I think a levy would be something that I would recommend that the commission
 10 considered. Obviously there are complexities to it but I do not see how at least in the foreseeable few year how this can be properly done in South Africa without extra resourcing since that is almost certainly unlikely to come from the Treasury given its limited revenues at the moment and other pressing needs. Then I think the banks should chip in and so should other corporate and professional enablers.

ADV PRETORIUS: Lord Hain you have mentioned the financial action task force already. Apparently South Africa is a member of that body and you do so against the background of a statement in paragraph 76 that states should perhaps strive for increased universality and I
 20 presume consistency and commonality are other ways of describing it in anti-money laundering policies and procedures. Do you have any further comments in that regard?

LORD HAIN: Well Chair yes I do.

ADV PRETORIUS: But particularly that in the last sentence of paragraph 76.

LORD HAIN: I do because it is – it is not enough simply to have good practice following the financial action task force recommendations let us say in South Africa. It is not enough to do that if here is not universality of imposing these standards in all – in all countries. And I think it is essential for example to raise the standard in states where financial corruption is endemic. I think of the United Arab Emirates particularly Dubai, China, Hong Kong are examples possibly the principle ones. Then offshore tax havens in the Caribbean and elsewhere where the problem arises as well. But these are the big
10 giants involved. And the financial action task force has proposed a set of recommendations aimed at preventing, detecting and sanctioning money laundering that should be adopted by all states and that should underpin national legislation on this issue in every country in the world. And I think it would be good if through your commission it was considered whether the South African government should appeal to other states itself having adopted these standards to do so as well.

ADV PRETORIUS: In paragraph 78 and following you deal with the issue of mutual legal assistance. Be grateful if you would explain that concept. We will Chair be leading independent evidence on this matter
20 in due course.

LORD HAIN: Yes indeed. I mean by mutual legal assistance treaties these are designed to prevent criminals from escaping justice by relocating themselves and their assets and other jurisdictions. And I heard that states worked together to ensure criminals are held to account wherever they are in the world I mean the – this seems to me

to be absolutely essential and based on the reported locations of the funds stolen and laundered from – by the Gupta's cooperation between South Africa, Hong Kong, the United Arab Emirates and India is the priority. So there has got to be much better mutual legal assistance arrangements there with those four jurisdictions in order to make immediate progress. That is absolutely the priority.

ADV PRETORIUS: And you talk about mutual legal assistance treaties in paragraph 80.

LORD HAIN: Yes. As I explained these are designed to increase
10 cooperation, exchange information, get criminals back into their home jurisdiction and they can provide a domestic – a domestic their enforcement agencies and indeed the state with the information they cannot normally get through inter-law enforcement cooperation. It actually needs cooperation between governments and their regulatory and enforcement agencies not relying on the courts to – to do it which is you know much more bureaucratic, time consuming and much clumsier and that is no criticism of the courts it is just in the nature of the beast. And I think the time – the types of consistent – assistance that could be requested within a mutual legal assistance treaty includes
20 serving proceedings, obtaining special procedural material for example records held by banks and accountants and the accountants and additionally searching and seizure of evidence and then the freezing or confiscation of assets. So all these things are possible but made much more difficult if unachievable unless these treaties are in place.

ADV PRETORIUS: In paragraph 81 you make further comments Lord

Hain in relation to mutual legal assistance treaties and you refer to a mutual legal assistance treaty and extradition agreement with Hong Kong signed on 20 February 2009 and you state but has yet to be submitted to parliament for ratification. As authority for that you cite in a footnote a Department of Justice and Constitutional Development document in footnote 46. Do you perhaps the date of that document whether that still is the position?

LORD HAIN: I do not I am sorry Chair but I could try to find out and let the commission know if that would be of assistance?

10 **ADV PRETORIUS:** I am reliably informed by Mr [indistinct] that it is still the case.

LORD HAIN: So that is if – that being the case this is now ten years ago Chair. And Hong Kong is one of the, if I could put it this way dodgy jurisdictions which I have repeatedly mentioned. And I do not know what the reason for that is. President Zuma has been out of – former President Zuma has been out of office now for what – nearly two years and if that was a – one of the reasons for why it was delayed I do not know but there is no reason why it should be delayed any further.

20 **ADV PRETORIUS:** And then you speak in paragraph 81 also of the enforcement of such agreements and the utilisation of such agreements where they do exist.

LORD HAIN: Yes indeed and that is really important. It is no good having it if you not actually enforcing it and – and using it. For example there is one with India but we know the Gupta's live, have weddings, buy temples, have homes in India and yet they have not

been returned by the Indian government despite the South African authorities wishing to see them back in this country facing justice. So it is no good just having one of these treaties you have actually got to implement it.

ADV PRETORIUS: Then in paragraph 82 Lord Hain and following you deal with extradition agreements along the same lines as you have dealt with mutual legal assistance treaties.

LORD HAIN: Yes I mean like mutual legal assistance treaties Chair these are another type of interstate, inter-country mechanisms that can
10 be utilised and agreements to hold criminals to account and bring those who have fled overseas along with their laundered funds back home to justice. So I think that it is important that those are pursued and that those who have – those criminals who have committed for example state capture offences in South Africa are prevented from make – of committing further offences and their ill-gotten gains are returned. And all governments must ensure that their country does not provide a safe haven for the perpetrators of state capture. Again looking to seek refuge beyond the reach of international justice some of the main culprits and these names crop up I am afraid Chair time and time again,
20 Dubai, Hong Kong and as I mentioned in passing but want to stress now tax havens in the Caribbean. They are also the rogues in this rogues gallery of international financial crime. And that ex – requires the express criminalisation of money laundering and other types of financial crime as extraditable offences. Very important extraditable offences and agreements between states to extradite persons who

commit these offences. That is absolutely essential.

ADV PRETORIUS: You signed a note of caution in paragraph 85 where you say that it must be recognised that caution must be exercised in relation to states that do not observe the universal declaration of human rights and their justice systems.

LORD HAIN: Yes I am glad that that has been drawn to my attention Chair because you can see abuses of such procedures. I means it is well known for example that the Russian mafia and criminal elements in Russia use red notices under Interpol procedures to just slap one on
10 individuals willy nilly who then get arrested. Sometimes embossed doing so when they are quite innocent. And so it is important that it is done with some care and that Interpol actually you know do not just act on a red notice request willy nilly as they have done repeatedly that is well documented and I could send examples of that to you if that were something you might be interested in Chair.

ADV PRETORIUS: What is a red notice request?

LORD HAIN: Well this is – this is basically where an international person is – wanted notices essentially. There is another term for it which escapes me at the moment but they are ways of Interpol acting
20 properly and legitimately to track criminals down who have gone to another country and – and they should be supported in that and encouraged. But they have also been abused and there has been a series of cases where they have been abused. So it has got to be done you know properly and not abused by as I say Russian criminal elements as has been the case. But there is also a question here

which I mentioned the existence of extradition free havens. And I touch upon this in Exhibit QQ. Because there are a very few countries with ...

ADV PRETORIUS: It is QQd.

LORD HAIN: QQd sorry. There are very few countries with absolutely no extradition treaties but it is quite common for some countries to really if ever extradite their own nationals. France and Russia are examples of that. There are also many, many countries within South Africa has not current extradition treaties and where South Africa has to proceed using ad-hoc and actually non-enforceable requests and
10 which are slow and can allow plenty of time for the criminal concerned to evade justice for many years flee to another jurisdiction for example.

So I think these - this extradition free haven problem is one that I think it would be good to - to consider in the context of your - your deliberations Chair and perhaps if I can just add briefly the - the point in paragraph 86 that it is not good enough just to have extradition agreements.

States must be willing to cooperate and cooperate quickly to ensure that criminals are held to account and it - I - I have suggested that *ad hoc* agreements are reached with respect to specific individuals
20 responsible for serious financial crime in the interim to speed the process up prior to negotiating and putting in - onto statute extradition treaties which you know take a bit longer. Can I ...?

ADV PRETORIUS: Is there anything you wish to add Lord Hain in relation to extradition?

LORD HAIN: Well there is. If I may going back to paragraph 84 Chair.

I mean I am particularly concerned with the - the question of the - the UAE - the United Arab Emirates and - and specifically Dubai. As - as have been mentioned before the Extradition Agreement and Mutual Legal Assistance Treaty between South Africa and the Emirates is a positive step forward, but it has taken eight years of negotiations and the Guptas are yet to be extradited and they currently free to spend their billions reducing any amount that might conceivably be repatriated back to South Africa later on and the question is why has this happened in Dubai.

- 10 **CHAIRPERSON:** Maybe I must just mention Lord Hain that I recently had a meeting with the Minister of Justice and I asked about what is happening in regard to that issue and he certainly did tell me that there were certainly challenges. I cannot remember the details, but I know that I think the following day there was some public statement or there was something in the newspapers that the Ministry of Justice had either issued or the newspaper said had taken up.

- That was I think roundabout the time when the United States announced some action against Gupta linked businesses and the Gupta family. So - so I certainly did raise questions to say what is happening
20 and he did say that there were certain challenges, but he did say that they were pursuing the matter. I - I cannot remember the details, but it is taking long. That - that is true. It is taking long.

LORD HAIN: Indeed.

CHAIRPERSON: *Ja.*

ADV PRETORIUS: If I may assist there Chair, because I was there ...

CHAIRPERSON: Yes. Yes you were in that meeting.

ADV PRETORIUS: When that communication was made ...

CHAIRPERSON: Yes.

ADV PRETORIUS: And it mirrors the concern raised by Lord Hain that despite efforts the level of cooperation appears to be lacking. I do not want to create an international incident, but that is the fact.

CHAIRPERSON: Yes. Yes. No. That is - I think that is true. *Ja.*

LORD HAIN: And perhaps Chair if I might just briefly add. The question I - I ask in my submission is why is this happening. It seems
10 to me either the Government under the rule of Dubai - Sheikh Mohammed Bin Rashid Al Maktoum - is wilfully sheltering a family that has looted astronomical amounts from South Africa taxpayers.

All the South African authorities do not have the capabilities or maybe political will to insist that the Guptas are arrested and returned to South Africa to face trial. I mean it is - it is frankly astonishing to me that that has not happened given everybody knows where they are.

So I think the - the Dubai Ruler I think it would be very
20 helpful if he accounted publicly for why this has not happened and explain whether it is to the Commission or more generally.

CHAIRPERSON: Yes.

ADV PRETORIUS: Lord Hain before we conclude your evidence as you do in paragraphs 87 and 88 of your statement. You have indicated that you wish to deal with a few other issues that are not - not in your

statement. The first of those is the action taken by the US Government to impose sanctions on the Gupta family and your response in relation to your own Department of the Exchequer in the United Kingdom.

LORD HAIN: Yes Chair.

ADV PRETORIUS: If I may just - I am sorry to interrupt once more. Just refer the Chair to the documentation which appears at tabs 38 and 39 in Bundle QQB. That is the second large bundle before you Chair.

LORD HAIN: Yes. Thank you.

ADV PRETORIUS: Pages 7-8-9 and 7-9-1. Tabs 38 and 39. Do you
10 have that?

LORD HAIN: I do.

CHAIRPERSON: Do you say tab 39?

ADV PRETORIUS: 38 and then 38.

CHAIRPERSON: And 39. Yes and under 38 what paragraphs or no paragraphs? I thought you are referring to paragraphs. I thought you were referring to paragraphs.

ADV PRETORIUS: My apologies.

CHAIRPERSON: Yes.

ADV PRETORIUS: No. Tabs.

20 **CHAIRPERSON:** Oh. Tabs. Okay.

ADV PRETORIUS: I am sorry.

CHAIRPERSON: Okay. I am at 38.

LORD HAIN: So 38 is a - a letter I sent to the British Chancellor the Exchequer - the British Finance Minister ...

CHAIRPERSON: Hm.

LORD HAIN: On 11 October 2019.

CHAIRPERSON: Hm.

LORD HAIN: Following the decision by the United States Government to impose sanctions on the Gupta business family and one of their associates in relation to the subject we are discussing. The matter of corruption and money laundering and I refer there to robbing South African taxpayers of over £500 million and I ask specifically that the British Government urgently did exactly the same.

Follow the American lead and I name Rajesh, Atul and Ajay
10 are the Gupta brothers concerned and gave their identity numbers which were provided to me - to me on a previous occasion and stated the address where they live in Dubai and also pointed out that they travel including to India and that they seem to do so quite freely and asked that - that Britain do exactly the same thing.

Impose similar sanctions, because of all the reasons we have discussed. The shadowy shell companies. The lucrative contracts from State Owned Enterprises and so on and the important thing about these US sanctions is that they forbid all US entities from doing business with the family or handling their assets.

20 Now that would include banks and include the Bank of Baroda by the way. Even its Indian based and principal operations. So those - those are pretty powerful and forbidding sanctions to cross. So I was asking that the same type of sanctions were introduced in - in - by Britain and that they were - and that the Government imposed the same ban on UK entities including London based banks like HSBC, Standard

Chartered and the Bank of Baroda our - our friends in the banking world which had been culpable for all this money laundering and asked that the Indian and Dubai - that the British Government request the Indian and Dubai authorities to do the same thing and I might have added Hong Kong too which I will now and I - I think you know the South African President Cyril Ramaphosa has been very clear about leading the - the fight against corruption and State Capture and I think he needs much more help from countries like Britain as well as other countries around the world, because they have been conduit for the
10 Guptas to move their criminal millions globally.

The reply I got Chair which is at EXHIBIT 39 and I think page 7-9-1. Frankly ...

CHAIRPERSON: Yes.

LORD HAIN: Was to put it mildly very, very disappointing. I received this letter on 5 November. It has not been publicised yet and I placed it on the record which I frankly is a weak and pathetic non-reply saying no they are not intending to follow the US sanctions precedent. Claiming they did not have the same powers in the UK.

Well if not why not? Is my question and if I may say so I was
20 a Government Minister for 12 years in Britain including seven years in the Cabinet. I recognise this type of civil servant ...(intervenes).

CHAIRPERSON: Response.

LORD HAIN: It is a kind of word designed to give you know warm - warm sort of feelings ...

CHAIRPERSON: Hm.

LORD HAIN: But actually do nothing at all ...

CHAIRPERSON: Hm.

LORD HAIN: And it is simply not good enough and I think the - the British Government should do better. I have told - I have expressed directly to the - to the Minister concerned. I did not even have a reply from the Chancellor himself. I get a reply from a junior minister in the Department for International Development.

It is an important department, but not as powerful as the - the British Treasury to whom I wrote and it is just not good enough and -
10 and I think that you know why are there not sanctions being imposed by Dubai, India and Hong Kong and then I would like to if I can Chair ask the question has the South African Government requested this.

Has the South African Government requested that the UK and other jurisdictions where this money laundering has been documented as flowing through ...

CHAIRPERSON: Hm.

LORD HAIN: And I repeatedly mentioned them.

CHAIRPERSON: Hm.

LORD HAIN: Why they are not imposing sanctions as well. I think we
20 deserve an answer, because it is not good enough to simply give these bland and - and as I say pathetic non replies as I had sadly from my own Government. Sanctions are a powerful tool and we have seen them applied elsewhere in the world and they should be applied to the Guptas as well in my view.

ADV PRETORIUS: Lord Hain there were three other matters that you

drew to the attention of the legal team that you might still wish to mention. Some of them you have dealt with. The question of asset recovery. The predominance in the international finance environment of new digital methods being ahead of the game.

You have dealt with that to some extent and the issue of the levy on global corporates. You have mentioned that as well, but if there is anything you wish to add in that regard or in any other regard please do so.

LORD HAIN: Well perhaps Chair just briefly to - to reinforce the points
10 that - that had been made earlier. That I sought to make earlier. I had been struck at how slow action has been from South Africa and I know it is emerging from this terrible era of State Capture and the institutions have been either dismembered or their capacity undermined and I - and the resources are slim.

I understand all that, but you know it is a fast changing environment. This environment of international crime with the new digital opportunities for it and crooks wise up all the time and I think that is important that ...

CHAIRPERSON: And they act fast.

20 **LORD HAIN:** And the act fast.

CHAIRPERSON: They act fast. *Ja.*

LORD HAIN: They do indeed and they are doing it all the time through cybercrime and all sorts of other new phenomenon or relatively new phenomenon. It changes almost week by week and it is essentially to move - essential to move quickly and I understand why due process is

needed, but I - I just say as a friendly - a friend of the South African Government and particularly its President whom I admire and I think is widely respected across the world - is President Ramaphosa.

I just they need to make decisions more quickly and act more quickly and I hope that that might be something that your Commission could investigate. I just reinforce the need for the levy on global corporate given the lack of resourcing - resources that there are for the public purse in South Africa.

I think that that would be - and I - I wonder to what the follow
10 up will be both by the Commission and in any recommendations you might make by the Government. Will - we - we will not have then months of consultation on - on what your Commission might recommend. Followed by Parliamentary debate. Followed by still more months of consultation. Something ...

CHAIRPERSON: Hm.

LORD HAIN: Beloved of public administrations ...

CHAIRPERSON: Hm.

LORD HAIN: And I experience this myself as a Government Minister very frustrating.

20 **CHAIRPERSON:** Hm.

LORD HAIN: Endless process going round and round in circles.

CHAIRPERSON: Hm.

LORD HAIN: Instead of just immediate action.

CHAIRPERSON: Hm.

LORD HAIN: Is what I - I would urge before I perhaps conclude my

remarks on paragraphs 87 to 88.

CHAIRPERSON: Well what - what I can tell you in - in regard to what will happen or how quickly action may be taken after the recommendations of the - or the report of the Commission has been presented to the President is that as you would know this Commission has its origin in a report of the previous Public Protector and - and in her remedial action which required that this Commission be established.

10 She had also directed that within 14 days after the report has been made available to the President. The President I think should send to Parliament information as to what he would do with regard to the recommendations which seems to give an indication that the desire was that there should not be a long delay after the report of the Commission has been submitted to the President and that was if I recall correctly repeated by the High Court in Pretoria when it made an order which effectively reflected the remedial action of the Public Protector.

20 So there is that obligation on the part of the - of the President to make up his mind as soon as possible. At any rate within the time given unless that time is extended by the court to give him more time, because it maybe that 14 days after the report might be too short when the Commission has sat for a long time listening to evidence, but there is no doubt that the idea is that there should not be the kind of delay that has been seen in regard to some Commissions reports you know.

Long delays before any action is taken. So - and I think the

President - the current President has committed himself to acting you know without delay after the report has been given, but obviously he will have to digest the report and get advice and make up his mind what his response would be to it before that is made public, but that - that is how much I can tell you.

LORD HAIN: Well that - that Chair that is - that is encouraging and I am grateful for that ...

CHAIRPERSON: Yes.

LORD HAIN: That update which is ...

10 **CHAIRPERSON:** Yes. Okay.

LORD HAIN: Encouraging indeed.

CHAIRPERSON: Thank you.

ADV PRETORIUS: Quite apart Lord Hain from the will to act which is the subject matter of the exchange between you and the Chair now and his assurances in that regard. There is also the other question that you raised in your evidence that perhaps should not be lost sight of and that is given the sophistication of the international money laundering network and the tools at its disposal.

20 It is important that South Africa's own law enforcement agencies are equipped to as you put it stay ahead of the game. Both technologically and from a capacity point of view.

LORD HAIN: Yes indeed Chair. That is critically important and it is difficult enough for much better resourced and better routed agencies in the UK to do this. Such is the nature of cybercrime and financial crime and it is accelerating speed around the world and in South Africa

of course you know it is - it is difficult to - to keep up, but somehow it - it would be good if that were - if that were possible.

ADV PRETORIUS: Then ...

CHAIRPERSON: Well - I am sorry Mr Pretorius. Going back to the question we were discussing a few minutes ago. The one thing which could delay - could potentially delay action on the findings and recommendations of this Commission might be litigation, because there are very many people out there would like what this Commission is doing, but there are also very many people out there who do not like
10 what this Commission is doing and by the nature of the investigation that this Commission is doing and - and if it - if it is to make certain findings one cannot almost be sure that certain people would want to go to court and that - that could cause some delay, but it may well be that for example the President to whom the recommendations would be made and the report would be submitted that he might have to make up his mind on certain recommendations to say well if there is no court challenge about these ones I would want to go ahead and implement these, but he might just have to make up his mind about some, because it is - it is - I do not think anybody would be surprised if there is a lot of
20 litigation. A right to challenge findings of this Commission.

LORD HAIN: Thank - thank you for that - that update Chair. I - I am not sure that is really for me to - to comment on that. Except I have observed with some frustration and I am sure it is not as much frustration as you yourself have observed being at such - at such a high position in the judicial system.

The way the courts can somehow be in the process of law being used by the bad guys as opposed - as opposed to allowing the good guys to - to proceed and establish probity and ...

CHAIRPERSON: Hm.

LORD HAIN: And integrity in our - in our public administration system.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS: Yes. That raises a number of constitutional issues, but perhaps that is a debate for another time.

CHAIRPERSON: *Ja.*

10 **ADV PRETORIUS:** In paragraphs 87 and 88 - paragraph 88 of your statement Lord Hain. You summarise your submissions. We have heard the evidence and perhaps you wish to either summarise or make the concluding statement that you do in paragraph 88.

LORD HAIN: Well thank you Chair. I am - I am not sure if this appropriate, but could I just say by one of these historic ironies that I found myself appearing before you as a Deputy Chief Justice and my mother in 1963 in Pretoria was assisted at the trial - at his trial 15 year old Dikgang Moseneke the former Deputy Chief Justice your predecessor.

20 **CHAIRPERSON:** Oh that is interesting.

LORD HAIN: And he - he used to love a bar of chocolate. So she always took him a bar of chocolate every day as well as food and soup and so on and it - she - she did not know what became of him and she - he did not know who she was. That she you know - that I was her son and that I be active and prominent and so on.

So I am sure - she is recently died, but I am sure she would have loved the - the symmetry of me appearing before you just as she had supported your predecessor when he was a young boy and before he was dispatched to Robben Island to serve 10 years. So - apologies for that brief interlude, but ...

CHAIRPERSON: No. That - that is fine. Yes.

LORD HAIN: My recommendations to the Commission Chair just to summarise briefly. First of all increase transparency around beneficial owners of corporate and strengthen the program for auditing and due
10 diligence conducted by banks and professional enablers to ensure that they fully complying with anti-money laundering legislation policies.

Secondly, increase the sharing of data between banks and professional enablers, between banks and - and the State. So that there is greater visibility around the risk profile of customers and transactions. Thirdly, create additional penalties both at an organisational level and at an individual level for banks, their management and professional enablers who fail to self-police and act in accordance with anti-money laundering legislation and procedures.

Fourthly, to join the Extractive Industries Transparency
20 Initiative - the EITI. So that there is greater transparency and accountability around the operation of those industries and consider extending those to other sectors. Fifthly, increase the transparency around the Black Economic Empowerment Program to ensure that the legitimate aims of this initiative and important aims are not subverted for the personal gain of a minority of criminals.

Sixthly, ensure proper utilisation of anti-money laundering and corruption legislation in existence as well as implementing additional legislation to better hold public officials to account and assist with the recovery of assets coupled with increased funding for the regulators both State funding if possible, but also by private levy - private corporation levy banks and so forth.

Seventh, fully implement all of the financial action task force recommendations. Eight, increase mutual legal assistance between States. Ninth, increase - encourage extradition agreements between
10 States and Chair finally can I say that - that making the changes needed to combat financial crime, investigate potential corruption and repatriation of stolen funds will not be easy.

However the people of South Africa deserve better than the obscene looting and devastation caused by State Capture and I hope the recommendation referenced in this report will also be recommended and considered by your Commission and then implemented by the Government, because I think as a friend of South Africa and as a former South African myself prior to my enforced exile a long time ago South Africa's had and still does a corruption near death experience
20 and must not - that must not be repeated and must be eradicated if the country is to survive and prosper in the future and if the values of the freedom struggle are to be realised. I thank you.

ADV PRETORIUS: Thank you Lord.

CHAIRPERSON: Thank - thank you very much Lord Hain, but before I let you go. Can I go back with you to the question of lifestyle audits

and unexplained wealth? What do you think of a proposal to the effect that as far as possible as part of trying to limit chances of corruption and limit the extent of corruption and so on and also as measures aimed at helping to pick up indications of corruption.

What do you think of a proposal that would say one, public officials maybe from a certain level, because maybe if it is everybody it might be unmanageable practically. From a certain level upwards should only be employed by Government or Government entities if they have agreed to undergo a lifestyle audit which must be done regularly.

10 Maybe once every two years. Once every three years or whatever the intervals are just to see whether there is anything that calls for in - for investigation, but also to say with regard to entities and business that want to do business with Government and Government entities.

Directors of those entities or companies that want to do business with Government should be prepared if they want their company to be considered to agree to lifestyle audits or something of that kind. Have you got any views you would like to share with - with me on that and is that something that you may know of in other
20 jurisdictions as something that maybe has been tried?

LORD HAIN: Chair I very much applaud the principle and see it as complimenting rather than being in some ways sort of contrary to unexplained wealth audits, because unexplained wealth audits are of a different character. I think the principle of lifestyle audits for all public officials, particularly the senior ones, I am not sure the cleaner would

need that, but certainly the CEO or the senior executives would The people likely to be involved in public contract negotiations and so forth or giving planning permissions and all those kind of licenses and all those kinds of things. I think that would be a very good thing where South Africa could maybe set a bit of a gold standard in this respect, and certainly as far as the private sector is concerned or those businesses that want to do public work for the government at all levels, national, provincial, local, municipal city and so on that they should be transparent and that would I think be very valuable indeed.

10 I mean all of these things obviously it needs to be proportionate, because I found in my time with government, and this may or may not be relevant to the South African situation, but certainly in Britain there was a tendency to once the – and by the way I am a big fan of civil servants, I couldn't have done my job as a government minister without you know diligent civil servants supporting me and implementing the decisions that I took, but I think there is a tendency to become over-bureaucratized and over-process driven where you take a principle lifestyle audit for both public officials and for potential beneficiaries of public contracts, and you kind of complicate it and put
20 bells and whistles on it to the extent that it becomes a – you know a super-human achievement to be able to tick all these boxes, you don't want that but you do want to know whether people are having money stuffed in their back pockets that they shouldn't, so I very much applaud that proposal from you Chair.

CHAIRPERSON: Yes, yes. Yes no thank you, I thought I would just

put that to you for your views, you know there is going to come a time in the life of the Commission where we will focus on possible recommendations and I will hear a lot of submissions from different stakeholders and so on, but I thought now that you are here maybe you could give me the benefit of your views, thank you very much.

LORD HAIN: No thank you, and if as I indicated earlier if there was any specific areas of expertise that you wanted, that I could maybe assist on, not necessarily myself but from some of those who helped me draw up the solution.

10 **CHAIRPERSON:** Yes, yes.

LORD HAIN: And in a sense educated me about the problem.

CHAIRPERSON: Yes.

LORD HAIN: I will always happy to help.

CHAIRPERSON: No thank you very much, thank you very much. Mr Pretorius are you done?

ADV PRETORIUS: [Inaudible – mic off]

20 **CHAIRPERSON:** Yes, well it remains for me once again Lord Hain to thank you very much for taking your time to come and share with the Commission the evidence that you have shared, what you have experienced and what you have gathered in the public domain which I think deserves a very close examination by myself. I will certainly look at them, some of the proposals you have made appear to me to be quite attractive.

I will hear more and we will hear from people in the industry and hear what they have to say but on the face of some of them

certainly they appear quite attractive and I thank you for having come all the way to assist us, thank you very much.

LORD HAIN: Thank you, as I said at the beginning it's been a privilege and I am grateful to you.

CHAIRPERSON: Yes, thank you very much. I have no doubt that the Commission will look at your offer very closely and where we think we could make use of your assistance through other people that we would approach you and see if you can continue to assist in whatever way.

LORD HAIN: Thank you.

10 **CHAIRPERSON:** Thank you.

ADV PRETORIUS: Thank you Chair.

CHAIRPERSON: You are now excused, thank you very much. That's the end of proceedings for today?

ADV PRETORIUS: For today yes, and I haven't yet ascertained the state of play for tomorrow but we will communicate with you as soon as possible.

CHAIRPERSON: I have been informed that there will be two witnesses tomorrow?

ADV PRETORIUS: Yes.

20 **CHAIRPERSON:** Reverend Frank Chikane will come and give evidence tomorrow as well as I think it's Colonel General Matakata, I may be having the title wrong, but I have been assured that she would be coming also tomorrow.

ADV PRETORIUS: Yes Chair.

CHAIRPERSON: So we will start at ten o'clock tomorrow morning.

ADV PRETORIUS: Thank you Chair.

CHAIRPERSON: Thank you, we will therefore now adjourn for the
today, the proceedings are adjourned.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 19 NOVEMBER 2019