



The Secretary:

The Judicial Commission of Inquiry into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of the Truth and Reconciliation Commission cases

Per e-mail: secretary@trc-inquiry.org.za

Dear Sir

RE: OBJECTIONS AND WRITTEN SUBMISSIONS ON BEHALF OF THE FORMER MEMBERS OF THE EXECUTIVE

1. We refer to the above matter and the pre-hearing meeting held on 27 October 2025 of the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases (**"the TRC Commission"**).
2. We wish to place on record that we act on behalf of:
 - 2.1. Former President Thabo Mbeki;
 - 2.2. Former Minister Brigitte Mabandla;

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2.3. Former Minister Charles Nqakula;

2.4. Former Minister Ronald Kasrils; and

2.5. The Honourable Speaker of the National Assembly; Thoko Didiza (collectively referred to as **'Former Members of the Executive'**).

3. As per the resolutions of the pre-hearing meeting of the TRC Commission, kindly find attached herewith the Objections and Written Submissions of the Former Members of the Executive.
4. Kindly note that the attached document comprises the Former Members of the Executives' position and written submissions; we thus will not be filing further documents on 07 November 2025.
5. We hope the above is in order.

Yours faithfully



Boqwana Burns Inc.

**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING
EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION
OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES**

**OBJECTION AND WRITTEN SUBMISSIONS ON BEHALF OF THE FORMER
MEMBERS OF THE EXECUTIVE**

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INTRODUCTION

1. We act on behalf of:
 - 1.1 Former President Thabo Mbeki;
 - 1.2 Former Minister Brigitte Mabandla;
 - 1.3 Former Minister Charles Nqakula;
 - 1.4 Former Minister Ronald Kasrils; and
 - 1.5 The Honourable Speaker of Parliament, Thoko Didiza.
2. We are instructed by Boqwana Burns attorneys, and refer to our clients collectively as **“former members of the executive”**.
3. The Commission¹ invited us to indicate a position and make submissions on:

*“the objection against the leading of witnesses by their legal representatives when so requested and the contention that all evidence before the Commission must be led exclusively by the Evidence Leaders”.*²

Summery position

4. Our position is as follows.
 - 4.1 First, we do not (in principle) object to a legal representative leading a witness.

¹ The Judicial Commission of Inquiry to inquire into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases.

² Letter from the Commission dated 27 October 2025.

- 4.2 Second, Rule 3.1 of the Rules of the Judicial Commission ("**Rules**")³ provides that the Evidence Leaders bear the primary responsibility to present the evidence of witnesses before the Commission. However, the Chairperson of the Commission may direct otherwise in regard to any specific witness. We understand this to mean that the default position is that the Evidence Leaders should present the evidence of witnesses. However, the Chairperson of the Commission may, as an exception, direct that a legal representative leads the evidence of a witness.
- 4.3 We submit, therefore, that Rule 3.1 must be interpreted to mean that: (a) the Chairperson of the Commission may (naturally, on request) permit the leading of evidence by a legal representative; (b) the legal representative must set out cogent reasons for the request. The application may be by way of a letter addressed to the Chairperson of the Commission (and Commissioners) and the affected parties; (c) the Chairperson may invite comments from an affected party, but ultimately it is the Chairperson who decides whether to grant the request; (d) a record of the request, objection (if any) and the directive must be sent to all parties to the Commission.
5. The question is thus not whether all evidence should exclusively be led by the Evidence Leaders. Properly stated, the question is whether in the present instance, the Calata and Other families ("**Calata Group**")⁴ were properly

³ Judicial Commission of Inquiry: Rules of the Judicial Commission of Inquiry to inquire into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases.

⁴ Transcript of the 27 October 2025 meeting ("Transcript") p58 lines 13-16.

permitted to lead the evidence of their witnesses instead of the Evidence Leaders.

5.1 We submit that they were not properly permitted to do so because the process contemplated by the Rules was not followed. There is, as things stand, no request to the Commission and no decision by the Chairperson of the Commission permitting the Calata Group to lead their own witnesses.

6. The related question is whether the Rules envisage that evidence may be led by a legal practitioner. Our submission is that properly construed, Rule 3.1 envisages that legal representatives may lead the evidence of their witness, however, this is only on the direction of the Chairperson of the Commission, pursuant to the process we outline above – which includes an invitation for objections from affected parties.
7. We elaborate on these submissions in what follows, but before we do so, we provide the factual context. Then, we set out the legal context that applies to the Commission.

FACTUAL CONTEXT

8. On 27 October 2025, the Commission's Evidence Leaders convened a pre-hearing meeting with, *inter alia*, the Calata Group and their legal representatives, the legal representatives of interested and affected parties including the National Prosecuting Authority ("**NPA**") and interested non-profit organisations. The purpose of the meeting was to discuss pertinent aspects of the Commission's readiness to commence the hearings on 10 November 2025.

9. During the course of the meeting, Mr Semenya SC stated that the Calata Group will call eight witnesses to testify in sequence⁵ during the first sitting of the Commission's hearings.⁶ Mr Varney, on behalf of the Calata Group explained that

“ . . . [i]t is not just the Calata witnesses. I believe there is another six or seven witnesses that we propose testify in this first seating.”⁷

10. On half of the NPA, Mr Gwala SC sought to understand how the Commission was going to be conducted. He asked:

“When the Calata Family legal representatives talk of leading eight witnesses, how is the Commission going to work? Who is going to lead the witnesses? I thought it would be the evidence leaders, but if my colleague says “I will be leading eight witnesses” it leaves a question in my mind whether each party is going to lead their witnesses, which is not what I thought the Commission would be . . .”⁸

11. Mr Semenya SC answered:

“ . . . [t]he preference to everybody, including the Calata Family, is those witnesses they wish to proffer, they are entitled to lead them. As evidence leaders, we will be putting questions to them. It is not easy way, but it may be more coherent, particularly if we use the Calata Family as an example; that they have been immersed in this matter for several years and they would be better placed to lead

⁵ Transcript p 75 lines 19-24.

⁶ Transcript p 78 lines 10-14.

⁷ Transcript p 78 lines 15-17.

⁸ Transcript p79-80 lines 23-25; 1-4.

those witnesses. And so will other parties who have applied to cross-examine and those who have been permitted to cross-examine. I can guarantee you that the evidence leaders, having considered all the documentation, will put to each and every one of the witnesses who come into this stand, unless there is no basis or relevance for additional questions once the evidence in chief, the cross examination has happened and there is no material to probe.”⁹

12. In response to this exchange, Ms Ntloko (also counsel for the NPA) sought clarity from the Evidence Leaders about: (a) what is meant by “a preference”; (b) how this preference was arrived at as this was the first time that the NPA was hearing of it, and lastly, (c) is it not the Evidence Leaders who will lead witnesses, with legal representatives entering the fray where clarification was required or for cross examination. This is what Advocate Ntloko said:

“I am sorry, Yanela Ntloko for the NPA. I just want to clarify something from the answer; and if I got incorrect, then the clarification would assist. You have indicated that a preference has been made. I think this is the first time at the very least as the NPA we have heard of this preference where the witnesses will be led by the various persons that are actually representing them. So, that is the first thing. So we need to understand when that preference was communicated and when that decision was made and by whom that decision was made and who it was communicated to. Then a secondary issue that I would want to put on the record; in that a Commission, as my leader had indicated, in its very nature, evidence leaders have no horse in the race. We all represent different clients; which means there are different interests that are then going to be dealt with by the various people, whoever you represent. And my understanding of

⁹ Transcript p80 lines 5-19.

Commissions is the fact that evidence leaders should be leading the evidence that will then determine what goes into the report itself. And then if at any point in time parties would want to then cross-examine or want to clarify particular issues, but not that they give what the narrative of their clients will be; and I think that for me is a bit of a discomfort and for my client as well. So if I can be clarified on the first issue and this issue as well on when this decision was made; that in a Commission established to go into the truth of allegations made against particular persons in particular institutions, evidence will then not be led exclusively; and I use 'exclusively' very loosely, by evidence leaders; and where there is clarification, then the various legal representatives would then take over." (own emphasis.)

13. Mr Semenya SC answered the questions by posing to Ms Ntloko a different question, which is "*what prejudice do you think happens if the Calata are led by their own legal team*".¹⁰
14. In response to this question, Ms Ntloko expressed that the prejudice lay in the fact that "*discussions happen when particular other persons are not in the room . . . the Commission cannot be speaking to particular parties at the exclusion of other parties. That is prejudicial on its own.*"¹¹ Ms Ntloko also highlighted a second aspect of prejudice: that the Evidence Leaders were appointed to lead evidence which they were seeking to outsource to the representative parties.¹²
15. Mr Boqwana, the attorney for the former members of the executive also raised two issues. The first concerned what seemed to be an agreement with the Calata

¹⁰ Transcript p82 lines 7-8.

¹¹ Transcript p82 lines 10-17.

¹² Transcript p82-83 lines 23 -25;1-3, p83-84 lines 23-25; 1-2.

Group about leading of witnesses in the absence of the other parties which tainted the process. Secondly, Mr Boqwana expressed concern that the evidence in the Commission may be used by the Calata Group in the pending proceedings before the High Court.¹³

16. The debate continued, and in response to the question regarding when and where the decision was communicated that the evidence of the Calata Group's witnesses would not be led by the Evidence Leaders, Mr Semenya SC said that:

*"there was no room where a decision was made of that kind. Just my track record with Commissions. I know exactly how they get run and I did not anticipate a controversy about this."*¹⁴ (own emphasis)

17. Later in the discussion, Mr Semenya SC intimated that the Evidence Leaders could lead the witnesses if the representatives made the witnesses available to them.¹⁵

18. For the Calata Group, Mr Varney expressed that they failed to see any prejudice, and that in their experience, it was commonplace for evidence to be led by their representatives *"if they receive permission from the Commission to do so."*¹⁶ He explained that they:¹⁷

¹³ Transcript p85 lines 10-21.

¹⁴ Transcript p87 lines 7-10.

¹⁵ Transcript p88-89 lines 7-10.

¹⁶ Transcript p89 lines 14-19.

¹⁷ Transcript p89 lines 20-25.

“made the request, given that we have had a long relationship and we know the facts of the matter. It will be quite difficult for evidence leaders coming in cold to get on top of the facts that quickly. So, in terms of the fact-finding exercise in assisting the Commission and its work, we made that request and the Commission responded favourably.”

19. Following this exchange, Ms Ntloko sought to clarify whether there was a decision made to grant the Calata Group permission to lead their own witnesses, and (if yes) to place on record that there was strong objection to this permission.¹⁸ To this end, Ms Ntloko requested that the Evidence Leaders produce the request by the Calata Group (for their evidence to be led by their legal representatives), and the response thereto.¹⁹ Ms De Vos, for the Presidency, reiterated the request,²⁰ as did Mr Simelane²¹ and Ms Rantho for the South African Police Service.²² Importantly, Mr Simelane underscored the importance of a transparent process in which all parties are kept informed of processes and procedures.²³
20. The letter that Mr Varney’s attorneys, Webber Wentzel sent to the Commission’s Evidence Leaders on 29 September 2025 making the request was read into the record, and it referred to a prior arrangement between Mr Semenya SC and Mr Varney regarding Mr Varney leading the evidence of the Calata Group. The letter reads, in part:

¹⁸ Transcript p91-92 lines 4-25;16-25.

¹⁹ Transcript p93 lines 7-11.

²⁰ Transcript p94 -95 lines 20-25;1-4.

²¹ Transcript p95 lines 18-23.

²² Transcript p99 lines 14-19.

²³ Transcript p95 lines 5-10.

“We confirm the arrangement reached between the Commission’s evidence leader, Adv Semanya SC, and our lead counsel, Adv Varney; that Varney will lead the evidence of our client witnesses during the public hearing.”²⁴ (own emphasis).

21. Ms Rantho pointed out that there was reference in the letter to a prior arrangement and asked that in addition to the letter, the Evidence Leaders also produce the arrangement between Mr Semanya SC and Mr Varney.²⁵ This request was reiterated by Ms Ntloko.²⁶
22. It was confirmed by the Commission’s Secretariat that not all the parties had been granted access to the SharePoint platform where the aforementioned letter was saved.²⁷ In fact, it appears that the majority of the people in the room did not have access to the said SharePoint platform.
23. After the meeting, the Commission produced the letter that was sent to Evidence Leaders on 29 September 2025. The relevant part of the letter has already been quoted above.
24. In addition to this letter, the Commission also shared a letter addressed to the Chairperson of the Commission, by the Calata Group. In this letter, dated 18 September 2025, the Calata Group advised the Chairperson of a potential conflict of interest as regards Mr Semanya SC on a single topic. They requested that Mr Semanya SC not be *“involved in any deliberations or leading or cross*

²⁴ Transcript p98 lines 1-20.

²⁵ Transcript p99 lines 9-19.

²⁶ Transcript p101 lines 7-20.

²⁷ Transcript p103-105 lines 5-25; 1-25; 1-25.

examination of witnesses in relation to the amendments of the Prosecution Policy."

They advised the Chairperson that:

*"2. It has come to our attention that the chief evidence leader, Ishmael Semanya SC ("**Mr Semanya**") represented the National Director of Public Prosecutions ("**the NDPP**") and the Minister of Justice ("**the Minister**") in Nkadimeng and Others v National Director of Public Prosecutions and Others [2008] ZAGPHC 422.*

*3. In the foregoing matter, Thembi Nkadimeng (now Simelane) and the wives of the Cradock Four ("**the applicants**") challenged the amendments in Appendix A to the Prosecution Policy titled: "PROSECUTING POLICY AND DIRECTIVES RELATING TO THE PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST AND WHICH WERE COMMITTED ON OR BEFORE 11 MAY 1994" ("**the amendments**").*

4. The applicants contended that the amendments amounted to "a backdoor amnesty" and an unlawful attempt to shield apartheid-era perpetrators from justice. Judge M F Legodi declared the amendments to be unconstitutional and set them aside.

5. Our clients (who include the Simelane and Cradock Four families) intend to put up the amendments to the Prosecution Policy as a key example of how the South African government sought to intervene and block the bulk of the TRC cases from proceeding.

6. In order to avoid any public perception of partiality or conflict we respectfully request that Mr Semanya not be involved in any of the deliberations or leading or cross examination of witnesses in relation to the amendments of the Prosecution Policy. As there is in any event likely to be a division of labour amongst the evidence leaders, we believe this to be a practical and sensible suggestion.

7. Since the Commission must be seen by the community of victims and families and the wider public to be scrupulously independent, we trust that you will give our proposal serious consideration."

25. The Chairperson of the Commission responded to the above letter on 19 September 2025, that:

"2. I have sent the letter to Adv Semanya SC for his response.

3. He advises me that Judge Legodi, in that matter, was not called to decide whether there was any interference with the investigation or prosecution of the TRC cases which is the mandate of this Commission.

4. Having considered the concerns of your client and having heard Adv Semanya SC's response, I am minded going with a solution you propose. The concerns expressed by your client are noted. I make no decision on them. I will have another member of the Evidence Leader deal with this aspect."

26. It is within the above factual context that the Commission requested that the parties make the submissions.

THE LEGAL CONTEXT APPLICABLE TO THIS COMMISSION

27. We turn now to set out the legal framework that is applicable to *this* Commission.
28. Section 84(2)(f) of the Constitution empowers the President to appoint commissions of inquiry. It is common cause that this Commission was established in terms of section 84(2)(f) of the Constitution, and the Terms of Reference were issued on 25 May 2025.
29. In terms of section 1(1)(a) of the Commissions Act 8 of 1947 (the “Commission Act”), the President may declare the provisions of that Act applicable with reference to the Commission. The President, in establishing this Commission, directed that the Commission Act shall apply to the Commission.²⁸ This is set out in Item 4 of the Terms of Reference.
30. Section 1(1)(b) of the Commission Act authorises the promulgation of regulations which regulations may, inter alia, (iii) provide for the manner of holding or the procedure to be followed at the investigation. Item 5 of the Terms of Reference of this Commission authorises the making of regulations to enable the Commission to conduct its work meaningfully and efficiently. This item reads as follows:

²⁸ Item 4 of the Commissions Terms of Reference.

“5. Regulations may be made, after consultation with the Chairperson of the Commission, in terms of the Commissions Act, 1947, and shall apply to the Commission in order to enable the Commission to conduct its work meaningfully and effectively and to facilitate the gathering of evidence by conferring on the Commission powers as necessary, including the power to enter and search premises, secure the attendance of witnesses and compel the production of documents.”

31. On 19 August 2025, the Commission Regulations were promulgated.

31.1 In terms of Regulation 3, the Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of its functions, in a capacity other than that of a member.

31.2 Regulation 6 deals with representation. It provides that “any person appearing before the Commission may be assisted by an advocate or an attorney.”

31.3 Regulation 8 sets out provisions relevant to the examination of persons appearing before the Commission. In terms of section 8(4)(a):

“(4)(a) A witness may, after examination by an evidence leader of the Commission, be re-examined by his or her legal representative strictly for the purpose of explaining the evidence given by the witness during his or her examination, and only after an application to re-examine has been granted by the Chairperson.

(b) any evidence leader may, after the re-examination of a witness referred to in paragraph (a), conduct a further examination of the witness concerned."

31.4 Regulation 8(3), which deals with cross examination, states that:

"(3) Any witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination should he or she deem it necessary and in the best interest of the functions of the Commission." (own emphasis.)

31.5 Section 14 of the Regulations permits the Commission to determine its own procedures.

32. It is common cause that on 29 August 2025, the Commission's Rules were issued.

32.1 Rule 3 is titled "Witnesses presented by the Commission's Evidence Leader and implicated persons and their evidence".

32.2 Rule 3.1 stipulates that:

"Subject to anything to the contrary contained in these Rules or to the Chairperson's directions in regard to any specific witness, the Commission's Evidence Leader bears the overall responsibility to present the evidence of witnesses to the Commission." (own emphasis.)

32.3 Rule 3.1 must be read alongside Rules 3.2 and Rule 3.3.

“3.2 A member of the Commission’s Evidence Leader may put questions to a witness whose evidence is presented to the Commission by the Commission’s Evidence Leader including questions aimed at assisting the Commission in assessing the truthfulness of the evidence of a witness. Subject to the directions of the Chairperson, the Commission’s Evidence Leader may ask leading questions.

3.3 If the Commission’s Evidence Leader intends to present to the Commission a witness, whose evidence implicates or may implicate another person, it must, through the Secretary of the Commission, notify that person (“implicated person”) in writing within a reasonable time before the witness gives evidence: . . .”

32.4 Rule 3(7) states that there is no right to cross-examination. It reads:

“In accordance with Regulation 8(3), there is no right to cross-examine a witness before the Commission, but the Chairperson may permit cross-examination should she deem it necessary and in the best interest of the work of the Commission to do so.”

33. Our primary submission is that the Regulations and the Rules make clear that the Evidence Leaders bear the primary responsibility to lead the evidence of witnesses before the Commission. We expand on the submissions below.

NATURE AND FUNCTION OF A COMMISSION AND ROLE OF EVIDENCE LEADERS

34. Our courts have repeatedly clarified the nature and function of commissions of enquiry.
35. In *SARFU III*, the Constitutional Court said that “*the functions of a commission of inquiry are to determine facts and to advise the President through the making of recommendations.*”²⁹ In addition to advising the executive, a commission of inquiry serves “*a deeper public purpose, particularly at times of widespread disquiet and discontent.*”³⁰
36. In *Zuma*,³¹ the Constitutional Court distinguished between a Commissions of inquiry as an “*investigative tools which the President may invoke for purposes of investigating matters of public concern*” or “*for gathering information considered necessary for formulating policy.*”³²
37. Based on the terms of reference of this Commission, there is no doubt that it falls squarely under the category of the first type of commission.
38. The inquisitorial nature of a fact-finding commission is trite. The commission must investigate facts in terms of an inquisitorial process. The commission must

²⁹ *President of the Republic of South Africa v South African Rugby Football Union* [1999] ZACC 11; 2000 (1) SA 1 (CC); 1999 (10) BCLR 1059 (CC) (*SARFU III*) para 146.

³⁰ *Minister of Police and Others v Premier of the Western Cape and Others* (CCT 13/13) [2013] ZACC 33; 2013 (12) BCLR 1365 (CC); 2014 (1) SA 1 (CC) (1 October 2013) para 45.

³¹ *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma* (CCT 295/20) [2021] ZACC 2; 2021 (5) BCLR 542 (CC); 2021 (5) SA 1 (CC) (28 January 2021) (“*Zuma*”).

³² *Zuma*, para 2.

establish what the facts are. The court in *Bell v Rensburg* described this function as follows:³³

“Die eintlike funksie van ’n Kommissie van Ondersoek is om die antwoorde te vind op sekere vrae wat U Eksellensie in die opdrag stel. ’n Kommissie is self daarvoor verantwoordelik om getuienis te versamel, getuies se verklarings af te neem en om die juistheid van sulke getuienis deur inkwisitoriale ondersoek te toets - inkwisitoriale in die Kanonieke sin, en nie in die Spaanse sin nie.”

Translated

“The proper function of a Commission of Inquiry is to find answers to certain questions put (by the State President) in the terms of reference. A Commission itself is responsible for the collection of evidence, for taking statements from witnesses and for testing the accuracy of such evidence by inquisitorial examination.”

39. This approach was recently applied in *Corruption Watch*, a case that concerned an application by Corruption Watch to review and set aside the findings and recommendations of the Commission of Inquiry into allegations of Fraud, Corruption, Impropriety or Irregularity in the Strategic Defence Procurement Package (“**Arms Deal Commission**”). The court reviewed and set aside the findings of the Arms Deal Commission.

³³ *Bell v Van Rensburg, NO* [1971] 4 All SA 39 (C) p 54.

40. The Full Court made several important findings in setting aside the Arms Deal Commission's findings. It held that a commission must operate within the framework of the principles of legality.³⁴ It also stressed that in order for it to complete its mandate and in the exercise of its functions, the Arms Deal Commission could-not, for example, perform its tasks by demonstrating bias, breach fundamental principles of fairness or commit significant errors of law such as refusing to admit evidence on manifestly incorrect legal grounds.³⁵
41. Significantly, the court looked at how the statements and documentary evidence of key witnesses was treated, and how their oral evidence was conducted by the Arms Deal Commission and the evidence leaders to impugn the Arms Deal Commission's findings. Regarding oral evidence, the court found that:

"[53] . . . The manner in which the evidence leaders and members of the Commission approached critical witnesses, particularly Mr Chippy Shaik and Advocate Hlongwane exhibited a complete failure to rigorously test the versions of these witnesses by putting questions to them with the required open and enquiring mind. Given the welter of allegations contained in material in the possession of the Commission against them, it failed to confront these witnesses with these serious allegations which were made against both in respect of corruption and wrongdoing.

[54] The questions posed to these individuals in particular, were hardly the questions of an evidence leader seeking to test extremely serious allegations that

³⁴ *Corruption Watch and Another v Arms Procurement Commission and Others* (81368/2016) [2019] ZAGPPHC 351; [2019] 4 All SA 53 (GP); 2019 (10) BCLR 1218 (GP); 2020 (2) SA 165 (GP); 2020 (2) SACR 315 (GP) (21 August 2019) para 15.

³⁵ *Corruption Watch* para 51.

went to the heart of the reason for the establishment of the Commission. Additionally, other than being influenced by the alleged lack of authenticity of the documents on which the allegations against Mr Shaik were based, the Commission seems to have been content to simply put the allegations to Mr Shaik and then to accept his denial thereof. This is hardly an investigation whose objective is to get to the bottom of the allegations.

[55] *It cannot be the modus operandi of an independent commission, determined to discharge its mandate, to ask peripheral questions to implicated witnesses and thus fail to test the veracity of the evidence in terms of documents, reports and records which were readily available to it.*" (own emphasis).

42. The court found that there was a manifest failure to probe any of the manifold allegations against the key witnesses, notwithstanding the supporting evidence available to the Commission:

*"the evidence leaders failed to ask any questions with regard to the specific pieces of the evidence which were available to the Commission, nor was one single question put to Advocate Hlongwane by members of the Commission."*³⁶

43. In relation to the allegations in witness statements, the court intimated that the witness statement of one key witness "called for further investigation" by the Arms Deal Commission.³⁷ The court said, rightly, that "*a commission which was*

³⁶ *Corruption Watch* para 64.

³⁷ *Corruption Watch* para 59.

intent on enquiring and thus determining the truth could not have accepted this witness statement without careful interrogation.”³⁸

44. Lastly, the court criticised the Arms Deal Commission for its failure to access information that was highly relevant to its work. The court held that:

“[67] . . . The failure of the Commission to access this information, relevant as it was to the issues it was enjoined to investigate, seriously hobbled its investigation. It is a failure that effectively deprived the Commission of the essence of the investigation it was established to undertake.”

45. Ultimately the court held that the Arms Deal Commission failed to enquire into key issues, as is to be expected of a reasonable commission.³⁹ The Arms Deal Commission failed to enquire fully and comprehensively into the issues which it was required to investigate on the basis of its terms of reference.⁴⁰ Accordingly, the court reviewed and set aside the findings of the Arms Deal Commission.⁴¹

46. It is evident from *Corruption Watch* and the earlier mentioned cases that the Commission and evidence leaders play a crucial role in the leading of evidence before the Commission. The Commission, through the evidence leaders must, *inter alia*:

46.1 ensure that relevant information is presented before the Commission;

46.2 interrogate witness statements presented to the Commission;

³⁸ *Corruption Watch* para 62.

³⁹ *Corruption Watch* para 69.

⁴⁰ *Corruption Watch* para 53.

⁴¹ *Corruption Watch* para 70.

- 46.3 probe and investigate allegations in witness statements;
 - 46.4 call for more information where this is necessary; and
 - 46.5 put the right questions to the witnesses and interrogate answers.
47. We submit that the Commission's' Regulations and Rules must be assessed against these trite principles.

REGULATIONS AND RULES ARE EXPLICIT ABOUT ROLE OF EVIDENCE LEADERS

48. We have quoted the relevant Regulations and Rules that apply to the Commission above.
49. The essence is that Commission's Evidence Leaders bear the overall responsibility to present the evidence of witnesses to the Commission. This is the default position. However, the Chairperson may direct that the evidence of a specific witness be presented by that witness' legal representative. This is the exception. The application for such an exemption must set out cogent reasons why the evidence should be presented by a legal representative.
50. The Regulations and Rules bear out the crucial role that the Commission and evidence leaders play in the proper presentation of evidence before the Commission. They have the overall responsibility to ensure that the issues identified in the Terms of Reference are properly investigated, probed and

presented before the Commission. Failure to do so may constitute grounds to review and set aside the Commission's findings.

51. Given the overarching duty on the Commission and evidence leaders, we submit that even when a witness is presented by a legal representative, it is still for the evidence leaders to ensure that all relevant evidence is presented to the Commission.

52. When applied to the background facts, it is clear that:

52.1 there was no request to the Chairperson of the Commission for the Calata Group to lead their own evidence; and

52.2 the Regulations and Rules of the Commission provide the opportunity to lead one's own witnesses, however, an application with cogent reasons must be made to the Chairperson of the Commission. This process was not followed by the Calata Group.

53. The assertion in the letter from the Commission dated 27 October 2025 that there was an oral request, and that the decision was granted in terms of Rule 3.1 is regrettable and clearly an afterthought. The transcript of the 27 October 2025 meeting bears this out.

54. We underscore that our interpretation of the Regulations and Rules are substantiated by the letter from the Calata Group to the Commission's Chairperson on 18 September 2025. In the letter, the Calata Group specifically requested that Mr Semenya SC:-

“not be involved in any of the deliberations or leading or cross examination of witnesses in relation to the amendments of the Prosecution Policy. In response to this, the Chairperson wrote that “I will have another member of the Evidence Leader deal with this aspect.”

55. Moreover, our interpretation gives effect to the explicit wording of the Regulations and Rules and their purpose.⁴² The conduct of the Commission’s proceedings is essential to the terms of reference. If the proceedings are conducted in a manner that undermines the objectives of the Commission, the Commission would not be operating “*within the framework of the principles of legality*”.⁴³
56. Finally, the serious nature of the allegations against, *inter alia*, the former executive in the absence of any relevant documentary evidence to substantiate the allegations makes it so that the Commission’s evidence leaders should play the leading role before the Commission.
57. It is alleged that the affected members of the executive stifled, for political reasons, the investigation and prosecution of Truth and Reconciliation Commission cases (“**TRC cases**”).
58. So far, the Commission has not produced any relevant documents that seek to demonstrate the political interference. If the Calata Group leads the eight witnesses that it intends to lead without relevant documents, and an objection is

⁴² *Natal Joint Municipal Pension Fund v Endumeni Municipality* (920/2010) [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (16 March 2012) para 18.

⁴³ *Corruption Watch and Another v Arms Procurement Commission and Others* (81368/2016) [2019] ZAGPPHC 351; [2019] 4 All SA 53 (GP); 2019 (10) BCLR 1218 (GP); 2020 (2) SA 165 (GP); 2020 (2) SACR 315 (GP) (21 August 2019) para 15.

raised to the lack of supporting documents, the Commission would have to halt the witness' evidence to allow for a document request where this is possible. This would hamper the work of the Commission in a meaningful way. Whereas if the evidence leaders prepare to and lead the witnesses, they may – well before time – assess that documents are needed to substantiate an allegation and make the request well before the oral presentation. This speaks to the efficiency that is required in the proceedings before the Commission.

59. We emphasise that permission, even if granted as contemplated, cannot be a blanket one for a legal representative to lead all witnesses called by a group of interested and affected parties, such as the Calata Group. Familiarity with the evidence of witnesses can also not serve as the sole justification for such permission. It is the everyday work of legal practitioners, including evidence leaders in commissions of inquiry, to fully acquaint themselves with the evidence of witnesses to be led. Evidence leaders must diligently assemble relevant evidence, assess it for its relevance, cogency and completeness and present it to the Commission. They cannot shift this responsibility to legal representatives representing groups of witnesses. Doing so threatens to undermine the efficacy and credibility of the Commission.

CONCLUSION

60. We submit that the Calata Group did not request the Commission's permission to lead the evidence of their witness, nor does any purported request and permission comply with the Regulations and Rules of the Commission. For the reasons set out earlier, the Calata Group ought to request the Commission's

permission, following a proper process, hearing all the affected and interested parties and making a lawful determination.

NGWAKO MAENETJE SC

NYOKO MUVANGUA

PHUMZILE SOKHELA

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5 November 2025