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**NOTICE IN TERMS OF RULE 3.3 OF THE RULES 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**

**TO: JOHANNES DE BEER**

**EMAIL: [debeers@saps.co.za](mailto:debeers@saps.co.za)**

**INTRODUCTION AND ESTABLISHMENT OF THE COMMISSION**

1. On 29 May 2025, the President of the Republic of South Africa issued Proclamation Notice No. 264 of 2025, establishing 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 Commission”).
2. The Commission was appointed in terms of section 84(2)(f) of the Constitution, 1996. The Honourable Madam Justice S. Khampepe serves as Chairperson, with the Honourable Mr Justice F. D. Kgomo and Adv A. Gabriel SC as members.
3. In terms of its mandate, the Commission is required to inquire into, make findings, report on, and make recommendations concerning allegations that, since 2003, efforts or attempts were made to influence, pressure, or otherwise improperly prevent the South African Police Service and/or the National Prosecuting Authority from investigating or prosecuting TRC cases. The Terms of Reference further require the Commission to determine whether officials within these institutions colluded in such efforts, and whether further action—including investigations, prosecutions, or the payment of constitutional damages—is warranted.
4. Among the parties identified as having a substantial interest in these proceedings are:

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- a. The applicants in the matter of L.B.M. Calata and 22 Others v Government of the Republic of South Africa and Others (Case No. 2025-005245, North Gauteng High Court, Pretoria); and
  - b. The families of victims in TRC cases who have a substantial interest in the matters under inquiry.

### **NOTICE IN TERMS OF RULE 3.3**

5. This notice is issued in terms of Rule 3.3 of the Rules of the Commission, read with the Regulations made under Government Notice R.278 of 2025.
6. The Commission's Evidence Leaders intend to present the evidence of one or more applicants in the Calata case, and any person who in the opinion of the Evidence Leaders possesses information that relates to the paragraph **Error! Reference source not found.** allegations against you and is relevant to the Commission's work.
7. The specific date and venue for the hearing at which such evidence will be presented will be communicated to you in due course.
8. Below is an extract from the Calata matter founding affidavit, with corresponding paragraph numbering, which implicate, or may implicate, you in allegations regarding efforts or attempts to halt or suppress the investigation or prosecution of TRC matters. Further details of the Calata proceedings, including the said affidavit, are available on the Commission's website at [www.trc-inquiry.org.za](http://www.trc-inquiry.org.za).

### ***PARTICULARS OF IMPLICATION***

***"The politicians intervene***

*The President must decide*

*137. It is reflected in Macadam's affidavit that he and Ackermann then met with Commissioner Johannes De Beer, the Divisional Head of the Detective Service of the SAPS (De Beer) and requested the SAPS to take over the investigations.*

*137.1 On 26 September 2003, De Beer replied to Ackermann informing him that the request had been discussed with the National Commissioner of the SAPS, Jacob "Jackie" Sello Selebi (Selebi). In his letter De Beer advised that the SAPS would not provide investigators for the TRC cases.*

*137.2 He indicated that the investigation of the TRC matters was a DSO responsibility and the NDPP would need to approach the President for a decision as to which agency should conduct the investigations. A copy of this letter is attached to Macadam's affidavit (FA5) as annex RCM4 (at p816).*

*137.3 According to Macadam, NDPP Bulelani Ngcuka never approached the President.*

*138. De Beer explained as follows in his letter:*

*"I have discussed your request for the assistance of the South African Police Service, to investigate cases emanating from the TRC processes, with the National Commissioner, It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecutions, by the President. Our understanding was that this referral was politically inspired. As you know, a large number of cases to be investigated are those of expolicemen. It*

*is therefore understandable that you first endeavoured to have these cases investigated by the Directorate for Special Operations (DSO).*

*From your letter it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC, and secondly, why it was not possible to obtain a Presidential Proclamation to provide such mandate if it was lacking. Your letter only states that: "In March 2002, consideration was given to the issue of a Presidential proclamation, but problems were encountered in this regard. You are aware of the fact that the capacity created for the D 'Oliveira Committee is presently with the DSO.*

*In view of the nature of the investigations, the fact that the President has referred it to the National Director, and that it seem to be common cause that the initial understanding was that the DSO would have investigated it, the opinion is held that you, or the National Director should approach the President, and confirm the instruction of the President on who he wants to investigate these cases.*

*If the President indicates that the South African Police Service should be involved in the investigations, the Instruction should be obtained in writing. Upon receipt of such instruction, the South African Police Service shall of course assist, and the terms of reference, as well as issues such as logistics, number of investigators, command, can be discussed, as well as issues such as logistics, number of investigators, command, can be discussed, as well as other relevant issues.*

*You are therefore requested to approach the President on the matter, where after we can take the matter further, if necessary." (emphasis added)*



139. It is notable that the SAPS regarded the TRC cases as a political issue. It is also noteworthy that the only state entities authorised to conduct official criminal investigations in South Africa both refused to touch the TRC cases. It is highly unlikely that their decisions were spontaneous or mere coincidences. It is apparent that by May 2003 both the SAPS and the DSO were reluctant to take on the TRC cases, and in all probability had been told not to do so from a political level.

140. The fact that the NPA was told to contact the President reflected that the question of investigating the TRC cases was now a purely political one, and a sensitive one at that. It appeared that only the head of state could make that decision, regardless of what the law and Constitution said about investigative authority.

141. It is remarkable that NDPP Ngcuka did not contact the President for a decision on this question. The failure to do so probably suggests that approaching the President was seen as a futile exercise.

#### *No investigations*

142. Thereafter Ackermann and Macadam made a last-ditch attempt to persuade Special Director Ledwaba at the DSO to reconsider his decision not to investigate the TRC cases. Ackermann sent Ledwaba a letter (styled as an “Internal Memorandum”) dated 11 November 2003 appealing him to appoint investigating officers. It was pointed out in the letter that “if the DSO did not provide investigators the PCLU would not be able to deliver on its mandate.” Both the NDPP and Head of the DSO were copied on the letter, a copy of which is attached

to Macadam's affidavit (FA5) as annex RCM5 (at p818).

*This letter is reproduced below:*

*"1. In the light of current developments, I am constrained to document the history of the above saga.*

*i) In 2001 the NDPP decided that the DSO was responsible for the investigation and prosecution of the above cases. Both Advocates Sonn and McCarthy made a number of public statements creating an impression that the DSO was making a sincere effort to do justice to the cases. In addition, Advocate Sonn gave the President a full briefing on the matter.*

*ii) In 2002 the SNPU was established in order to investigate the cases.*

*iii) In 2003 and in response to the TRC's final report, the President placed the responsibility for the investigation and prosecution of TRC matter on the NDPP.*

*iv) In May 2003 I gave the NDPP and his Deputies a full briefing on all TRC, cases identified for prosecution.*

*My prosecution strategy was endorsed and Advocate McCarthy indicated that there would be no problem in having the cases declared in terms of Section 28 of the NPA Act. The NDPP briefed the Minister and Justice Portfolio Committee accordingly.*

*v) Shortly thereafter and in the same month you were presented with*

*applications in terms of Section 28 relating to the cases.*

*vi) In July 2003 you verbally informed me that you were not prepared to sign the declarations and were withdrawing the DSO from the further investigation of the cases. A letter to this effect was given to the CIO Leask by you. (Copy attached)*

*vii) In response thereto I requested Commissioner De Beer to appoint the police to take over the investigations. After a series of meetings with him, he approached the National Commissioner who indicated that the police would only investigate upon written instruction of the President (Copy of De Beer's letter is attached). His primary reason was that the SAPS had transferred all their members with appropriate experience to the DSO in order to capacitate it to conduct these investigations.*

*viii) After receipt of De Beer's letter, I made several unsuccessful attempts to contact you to discuss the matter. Eventually I had to report the matter to Dr Ramaite.*

*ix) On 3 November 2003 you informed me that you would sign the declarations in terms of Section 28(1)(b) and would appoint SSI De Lange to conduct the necessary investigations.*

*x) On 6 November 2003 Dr Ramaite informed Adv Macadam that he had discussed the matter with Adv McCarthy who indicated that the DSO would investigate.*

*xi) On 10 November 2003, Adv Macadam presented you with Section 28(i)(b)*

*declarations.*

*You informed him:*

- a) That you are not prepared to sign any declarations*
- b) De Lange would not be appointed despite the fact that it was explained to you that he was part of the initial investigation and familiar with all the witnesses and the facts of the cases.*
- c) That during the course of 10 November 2003 another Investigator will be appointed.*
- d) The President should not be approached to involve SAPS.*

*As at the date of this letter I have heard nothing further from you. I am constrained to express my concern at the above state of affairs. Since July 2003 no investigations have been conducted.*

*There are certain cases which could have been prosecuted which have prescribed. There is both National and International pressure to institute prosecutions (e.g. Simelane's case). An amnesty hearing for the Motherwell Matter has been set down for early March 2004 and the TRC was given an undertaking that certain investigations would be conducted and made available to the committee. The availability of witnesses and high public interest dictate that the other cases be brought to trial as soon as possible. The failure to do so will bring the bona fides of the National Prosecuting Authority into serious dispute and do irreparable damage.*



*Since I do not have any investigative capacity, I am powerless to deliver on my mandate. For the sake of justice and expediency, I appeal to you to assign De Lange and another investigator to investigate these cases and to sign the declarations in terms of Section 28(1)(b). This chapter in our country's history must be closed without further delay.”*

143. Ackermann’s heartfelt plea fell on deaf ears. Ledwaba was not moved to act, even though he was advised that the NPA was under local and international pressure, and cases were prescribing. Ackermann’s warning that the failure to proceed with the TRC cases would bring the NPA into disrepute, and do irreparable harm to its image, was precisely what happened.

144. The DSO persisted in its refusal to appoint investigators, as did the SAPS. According to Macadam this effectively brought an end to the TRC cases as it meant that no new investigations of the TRC matters could be opened.

145. The TRC cases were effectively closed down before the end of 2003, before the PCLU could commence real case work. The few cases taken forward subsequently were those in which investigation dockets had already been completed.

146. ...

147. The refusal by both the SAPS and the DSO to investigate some of the most serious crimes committed in South Africa deeply violated their legal and constitutional obligations.”

## YOUR RIGHTS AND OBLIGATIONS

9. You are entitled to attend the hearing at which the evidence relating to the above allegations, and any other that may be led against you, is presented.  
You may be represented by a legal practitioner of your choice.
10. Rule 3.4 requires that, within fourteen (14) calendar days of this notice, you submit a statement in the form of an affidavit responding to the allegations. Your affidavit must specify which parts of the evidence are disputed or denied, and set out the grounds for such dispute or denial.
11. If you wish to—
  - a. give evidence yourself;
  - b. call any witness in your defence; or
  - c. cross-examine the witness whose evidence implicates you,you must apply in writing to the Commission for leave to do so within fourteen (14) calendar days of this notice, accompanied by your affidavit.
12. You may also apply for leave to make written and/or oral submissions regarding the findings or conclusions that the Chairperson should draw from the evidence relating to you.

## COMMUNICATION WITH THE COMMISSION

13. All correspondence, applications, and affidavits must be directed to: The  
Secretary of the Commission [Insert Secretary's email and postal address]

DATED at Sci Bono Johannesburg on this 19 day of September 2025.

For and on behalf of the Evidence Leaders to the Judicial Commission of Inquiry  
into Allegations Regarding Efforts or Attempts Having Been Made to Stop the  
Investigation or Prosecution of TRC Cases.

