

**IN 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**

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA

Applicant

and

JUSTICE SISI KHAMPEPE, THE CHAIRPERSON

OF THE COMMISSION

Respondent

NOTICE OF APPLICATION FOR THE RECUSAL OF THE CHAIRPERSON

TAKE NOTICE THAT the abovementioned applicant hereby applies to the Commission on a date to be determined by their Chairperson, if any, for a ruling in the following terms, that

1. Any non-compliance with the first directive issued on 3 December 2025 is condoned;

2. The Chairperson is recused from the chairpersonship and/or membership of the Commission;
3. The Chairperson is recused from dealing in any manner with any aspect of the Commission which concerns the applicant, Former President. J.G. Zuma;
4. The allegations of judicial misconduct are referred to the Judicial Service Commission;
5. The matter be ventilated by way of an oral hearing; and/or
6. Any other just and equitably remedy.

TAKE NOTICE FURTHER that the affidavit of **JACOB GEDLEYIHLEKISA ZUMA** is annexed hereto in support of the application.

KINDLY TAKE THE NECESSARY STEPS FOR THE DETERMINATION OF THE APPLICATION.

DATED AND SIGNED AT SANDTON ON 15 DECEMBER 2025.



KMNS INC.

Attorneys for the Applicant

43 Wierda Road West

Wierda Valley

SANDTON, 2196

Tel: 011 462 5589

Emails: thabo@kmnsinc.co.za /

lavelesani@kmnsinc.co.za /

busisiwe@kmnsinc.co.za

Ref: Mr. Kwinana/Ms. Sibiya

**TO: THE SECRETARY OF THE COMMISSION
JOHANNESBURG**

EMAIL: secretary@trc-inquiry.org.za

**AND TO: ALL INTERESTED PARTIES
c/o THE SECRETARY OF THE COMMISSION**

EMAIL: secretary@trc-inquiry.org.za

**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**

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA

Applicant

and

**JUSTICE SISI KHAMPEPE, THE CHAIRPERSON
OF THE COMMISSION**

Respondent

**APPLICANT'S AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR THE
RECUSAL OF THE CHAIRPERSON**

I, the undersigned

JACOB GEDLEYIHLEKISA ZUMA

do hereby make oath and say that

1. I am an adult male citizen and former President of South Africa residing in KwaDakwadunuse, Nkandla.
2. The facts stated herein, unless the context indicates otherwise, are within my own personal knowledge and are to the best of my belief both true and correct.


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3. To the extent that I make allegations of a legal nature, I do so on the advice of my legal representatives which I have solicited, obtained and accept to be correct.


A: NATURE AND PURPOSE OF THE APPLICATION

4. The purpose of this application is to seek an order or ruling for the recusal of the Chairperson 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 case ("the Commission") from her position in terms of the original directive issued by the said Chairperson dated 3 December 2025, attached hereto and marked "A", as duly amended.
5. The said directive was in response to a letter sent out on my behalf by my legal representatives, and dated 3 December 2025. A copy of the said letter is annexed hereto and marked "B". Its contents are self-explanatory and I beg leave for its incorporation as if specifically repeated therein, to avoid unnecessary prolixity.
6. The legal bases for the application are actual bias and/or a reasonable apprehension thereof.
7. Before discussing the legal grounds, it will be appropriate briefly to set out some of the salient background and/or historical facts which are relevant to this application.

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B: BACKGROUND FACTS

8. The facts set out in this section have come to my attention from personal knowledge, research and/or investigations. Most of the facts are in the public domain and it is not anticipated that they will be disputed. However and in the unlikely event of any denials, further and better evidence will be provided in reply.
9. This approach is adopted out of practical necessity and largely due to the unreasonably tight timelines imposed by the Chairperson in annexure A. To make things worse, I have just returned only yesterday from a short overseas trip having departed on Sunday 7 December 2025. I have therefore not had sufficient time to consult with my legal representatives who are on the verge of closing down for the December break. In spite of these serious constraints, I will endeavour to comply with the directives.
10. The Truth and Reconciliation Commission ("the TRC") was established in 1995 by the first democratic government of South Africa.
11. In 1995, former President Nelson Mandela appointed, *inter alios*, Ms Sisi Khampepe, the current Chairperson of the present Commission, as a TRC Commissioner.
12. In 1996, Ms Khampepe became a member of Amnesty Committee of the TRC.
13. From September 1998 till December 1998, Ms Khampepe was employed by the Department of Justice and Constitutional Development as the Deputy



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National Director of Public Prosecutions. She served under the Director of Public Prosecutions Mr Bulelani Ngcuka.

14. In 2000, she was appointed by former President Thabo Mbeki as a Judge in the then Transvaal Provincial Division of the Supreme Court of South Africa, now called the High Court.
15. Between April 2005 and February 2006, she was appointed by former President Mbeki to chair the Commission of Enquiry into the mandate and location of the Directorate of Special Operations, popularly known as the Scorpions. The Commission is well known as the (first) Khampepe Commission.
16. In 2009, she was appointed as a Judge of the Constitutional Court of South Africa until her retirement in 2021.
17. Towards the end of 2020 I was required to appear before the so-called Zondo Commission which was formally referred to as ***"the Commission Into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State"*** and was chaired by then Deputy Chief Justice Raymond Zondo.
18. During the course of the hearing of the Zondo Commission I lodged an application for the recusal of Judge Zondo on the basis of deep rooted personal relationships with him as a friend and relative as well as certain confidential and private discussions which we had held in secret.
19. Although initially denied, these interactions were subsequently admitted by Judge Zondo during his interview for the position of Chief Justice some time in


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2022. If this is denied, a recording or transcript of the said interview will be made available at a subsequent stage or upon request.

20. Be that as it may, it is by now a matter of historical record that Zondo refused to recuse himself and instead approached the Constitutional Court to order me to appear before him despite my serious misgivings. I had made it clear that I was extremely aggrieved at being forced to appear before a biased decision maker.
21. As expected, the Constitutional Court per Jafta J ordered that I should appear before the Zondo Commission. The relevant judgement is reported as ***Secretary of the Commission of Inquiry Into Allegations of State Capture v Zuma 2021 (5) SA 1 (CC)***.
22. Justice Sisi Khampepe, the Chairperson of the present Commission was a member of the Bench. For present purposes only, I take no issue with that judgment.
23. Having failed and/or refused to appear, the Constitutional Court on an urgent basis ordered that I was guilty of contempt of court and sentenced to 15 months imprisonment. The matter was reported as ***Secretary of the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud in the Public Sector v Zuma 2021 (9) BCLR 992 (CC)***.
24. The majority judgment was penned and delivered by Justice Khampepe. It was widely viewed by many, including me, as the worst travesty of justice since the advent of democracy in South Africa.



25. In the close run-up to my imprisonment, I launched an application in the Constitutional Court for the rescission of the order for my imprisonment.
26. The matter was set down on an extremely urgent basis and heard in early July 2021. Its outcome was reported as ***Zuma v Secretary of the Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and Fraud in the Public Sector 2021 (11) BCLR 1263 (CC)***. In essence the Court confirmed my conviction and sentence without the benefit of a trial, an opportunity to appeal and/or to lead mitigating circumstance.
27. The presiding Judge was once again Justice Sisi Khampepe. It was her judgment, with which six others agreed and two strongly dissented, which effectively sent me to jail for 15 months to become the only person since the advent of democracy to serve a prison term without having ever pleaded to a charge or undergone the required sentencing processes.
28. Judged from both the tone of these last two judgments and her general demeanor it was self-evident that Justice Khampepe was motivated by deep-seated personal hatred, animosity and/or anger specifically directed towards me. More detailed support for this conclusion will be provided at the hearing of this application by making reference to, *inter alia*, the contents of the relevant judgment(s).
29. I certainly justifiably gained the distinct impression that this was the case and that she in particular and those who unfortunately agreed with the judgments she penned, failed to display the requisite levels of judicial independence and temperament. Instead she allowed personal feelings and anger at what they

Handwritten signature and initials, possibly 'NRS', with a large '6' to the right.

wrongly perceived as attacks directed at them personally or institutionally, get the better of her.

30. Sufficient evidence of this may be additionally gained from a reading of the minority judgment of Justices Jafta and Theron as well as relevant academic writings, the impugned judgments and my undue imprisonment without the benefit of a trial and in the negation of the clear provisions of the Constitution and international human rights law which conduct exceeds even the worst excesses of the apartheid regime. In my view, this was no mere error or oversight. It was a deliberate abuse, albeit technically binding in positive law.
31. Millions of people in South Africa continue genuinely to believe that the judgment was driven by undue vengeance, bitterness and highly personalised animosity. The decision reportedly sparked unprecedented levels of public rejection and unrest which regrettably resulted in the death of more than 350 South Africans and untold economic damage. But for the judgment all those people would still be alive today.
32. Further confirmation of my reasonable suspicions about the malice behind the judgment came in the form of various public media interviews conducted by Justice Khampepe after her retirement. Examples of this are interviews conducted on Newzroom Afrika (Channel 405) by Xoli Mngambi and the one given to Karyn Maughan of News 24. A copy of the letter is attached to Annexure "B" above.
33. I strongly believe that the tone and tenor of the interview confirms that my imprisonment was aimed at *"teaching me a lesson"* rather than a detached



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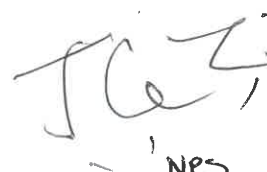
application of the law. This much is in any event obvious from the other surrounding factors referred to above. Alternatively my perceptions and/or apprehensions to that effect are, in the totality of the circumstances, reasonably held.

34. In May 2025 President Ramaphosa appointed the now retired Justice Khampepe to chair the present Commission. Being a direct appointee of a member of the Executive, the role is administrative in nature.
35. Justice Khampepe in turn caused Adv Semenya SC to be appointed as the Chief Evidence Leader alongside other Evidence Leaders.
36. In the course of the Commission various parties, including the National Prosecuting Authority, applied for recusal of Advocate Semenya SC, *inter alia*, on the basis of his having previously given allegedly conflicting advice to the NPA some 17 years ago. He had also reportedly entered into a unilateral and irregular arrangement with representatives of the law firm Webber Wentzel.
37. I elected not to join the recusal application, *inter alia*, because Advocate Semenya SC had represented me on numerous occasions during my term of Presidency and I trusted that he would make the correct decision. I therefore refrain from offering any view on the merits of the application for his recusal.
38. In the build up to the hearing of the Semenya recusal application Justice Khampepe as a member of the judiciary and as the decision maker who would ultimately make the final ruling, conducted herself improperly and exhibited actual bias in favor of the non-recusal of Adv Semenya SC.



39. A good example of this is that Justice Khampepe, without the knowledge of the applicants, privately and secretly gave advice Adv Semenya SC on certain key weaknesses in his case and even advised him on what to look out for and what to convey to his legal representative Adv Vas Soni in order to succeed in the recusal application. This is a case of plain and gross misconduct irrespective of the merit or demerit of the Semenya recusal application.
40. Purely in order not to jeopardise ongoing investigations into this serious conduct which poses a threat to our democracy, I deliberately and consciously refrain at this state, from revealing the complete evidence available to me. If the accusation is denied, then I will be left with no option but to resort to alternative procedural mechanisms in order to secure and/or provide the evidence. I trust that this will not be necessary.
41. In line with its Terms of Reference it is also incumbent upon the Commission to refer this aspect of the matter to the Judicial Service Commission. Failing that, it is my intention to lay a complaint with the JSC in terms of the relevant legislation. For now I only refer to it in so far as it is relevant to the present application.
42. It has incidentally since come to my attention that on 1 December 2025, the President has amended the Terms of Reference of the Commission to provide that it must complete its work on 29 May 2026 and submit its report by 31 July 2026. A copy of the relevant media release is annexed hereto and marked "C".

C: RELEVANT REGULATORY PROVISIONS



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43. In terms of paragraph 1 of the Terms of Reference, the Commission must inquire into, *inter alia*, matters dealing with cases heard before the TRC and in respect of which amnesty was not granted as well as the alleged activities of the National Prosecuting Authorities and/or its functionaries.
44. The Commission must be guided, *inter alia*, by the Constitution and its values and principles including the rule against bias and the sacrosanct principle that justice must not only be done but it must be seen to be done.
45. In terms of paragraph 6 of the Terms of Reference:

"The Commission shall where appropriate, refer any matter for prosecution, further investigation, or the convening of a separate enquiry to the appropriate law enforcement agency, government department or regulator".

(My emphasis)

46. In terms of Rule 4.1 of the Rules of the Commission, the hearings of the Commission will be held in public.
47. In terms of Rule 11, any party wishing to make any application to the Commission must do so on or at least 7 calendar days' notice. The Commission may condone non-compliance. As soon as possible after the Chairperson has become aware of such an application, she must issue such direction or order as to the future conduct of the matter as she may consider appropriate.

D: DISCUSSION: APPLYING THE LAW TO THE FACTS

48. Firstly, I wish to point out that her previous occupations as a member of the Amnesty Committee of the TRC and/or the Deputy National Director of the NPA



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render the Chairperson to be distinctively unsuitable and/or automatically disqualified for her present position. This submission is made in relation to the subject matter of the present Commission as set out in its Terms of Reference.

49. To illustrate this particular ground I wish to point out that the witnesses in the Commission will likely include the Chairperson's former colleagues and/or superiors in the TRC and/or the NPA, as the case may be. Furthermore the issue of prosecution is directly linked to the granting or non-granting of amnesty. This is trite.
50. Secondly, the role unethically played by the Chairperson in relation to the Semenya recusal matter, as described above also shows that the entire process and its outcome were tainted by bias. It therefore came as no surprise to me that on 4 December 2025, the ruling in that matter was in favour of the non-recusal of Semenya SC which was the desired outcome of the Chairperson. She ought to have recused herself from that sitting in the first place.
51. The Commission will be referred to relevant pleadings, transcript and/or outcome of the application which will vindicate the submission that the outcome was improperly pre-determined. The entire point and purpose of appointing a member of the Judiciary to chair a Commission is exactly to import his or her supposed or presumed impartiality. In the present case that purpose was clearly defeated.
52. Last but not least, the previous conduct of the Chairperson in relation to my controversial detention without trial and her subsequent negative public



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commentary, make it untenable for me to comply with the request to participate in the present Commission as set out in the Rule 3.3 Notice sent to me by the Commission and in any process which is tainted by her demonstrable and/or reasonably perceived bias. For ease of reference, a copy of the Rule 3.3 Notice which was originally sent to me by the Commission is annexed hereto and marked "D".

53. In the premises, I hereby apply for a ruling that:-

53.1. The Chairperson recuses herself from the chairpersonship or membership of the Commission; and/or

53.2. The Chairperson recuses herself from dealing with any matter or aspect of the Commission which concerns me and/or my proposed participation in the Commission.

54. The relief sought is based on any one or more or all of the three grounds separately set out in Annexure B and further elaborated upon above in this affidavit, read with the notice of Motion to which it is attached.

55. The application is based on my allegations of:-

55.1. (where applicable) actual bias; and/or

55.2. a reasonable apprehension of bias on my part.

56. For the avoidance of any doubt, I am fully mindful of the fact that the rationality, legality or otherwise of the appointment of the Chairperson is a matter which falls outside of the jurisdiction of the Commission. If it becomes necessary that issue will be taken up separately with the appointing authority in separate



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proceedings. None of that precludes the granting of the relief sought in the Notice of Motion, as pleaded therein in the main or in the alternative. I am advised that oral argument may be necessary to deal with and/or to clarify this aspect.

57. In line with past practice and in the interests of justice I submit that it will be improper to determine this application on the papers and that an oral hearing ought properly to be constituted. This view has already been communicated in writing to the Commission.
58. In that regard and despite the prematurely issued directions of the Chairperson, it will be appropriate to grant the relief for an oral hearing.

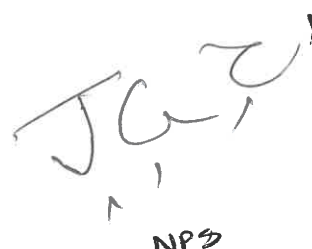
E: CONDONATION

59. In terms of the prematurely and inappropriately issued directives, I am required, *inter alia*, to provide this application, the replying affidavit and written submission on 11, 22 and 31 December, respectively.
60. It will be impossible to comply with such directions, *inter alia*, because my attorneys close office on 15 December 2025.
61. In the circumstances I instructed my attorneys to request the adjustments indicated in the letter to the Commission dated 11 December 2025, a copy of which is annexed hereto and marked "E".
62. The Commission responded with a counter-proposal which I have accepted. It is contained in Annexure "F", which is self-explanatory.



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63. It will be noticed that one of the terms of the agreement between the parties was the making of an application to condone the non-compliance with the earlier arguably premature directive, as I hereby do.
64. Even assuming for present purposes, that the earlier directive was validly made, condonation ought to be granted because:-
- 64.1. The new timelines are reasonable and have been agreed as between the parties.
- 64.2. The duration of the adjusted deadlines are not inordinately long and they accommodate the reality of the December break on the part of both my legal representatives and the Commission, which is a reasonable explanation for the delays. My recent travelling also provide an additional explanation.
- 64.3. No party will suffer any prejudice as a result of the adjustments, which have been specifically tailored to accommodate the programme of the Commission and sufficient for a ruling, one way or the other, on the present application. On the other hand grave prejudice and injustice will result if the application is not entertained.
65. In the totality of the circumstances and good cause having been shown, it is in the interests of justice for condonation to be granted and for the application to be dealt with in accordance with the timelines set out in second directive, Annexure "F" above.


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WHEREFORE, I pray for the order set out in the Notice of Application to which the affidavit is annexed.

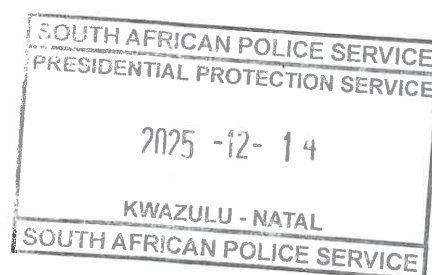


DEPONENT

Sworn to and signed before me in Durban on this the 14th day of **DECEMBER 2025**, the deponent having acknowledged in my presence that he knows and understands the contents of this affidavit, which he regards as binding on his conscience and has no objection to taking the prescribed oath, the Regulations contained in the Government Notice No. R1258 of 21 July 1972, as amended, and the Government Notice No. R1648 of 19 August 1977, R1428 of 11 July 1980 and R774 of 23 April 1992 having been duly complied with.



COMMISSIONER OF OATHS




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"A"

Lavelesani Ncube

From: Secretary <secretary@trc-inquiry.org.za>
Sent: Wednesday, 03 December 2025 11:38 PM
To: Lavelesani Ncube; mongezi
Cc: Thabo Kwinana; Busisiwe Sibiyi; Zukiswa Mbana
Subject: Re: NOTICE IN TERMS OF RULE 3.3 JACOB ZUMA
Attachments: Letter to KMKS Inc - -Zuma - 03.12.2025.pdf

Importance: High

Dear Sir/Madam,

Please find herewith, the letter in response to your email of even date, for your attention.

Kind Regards,



Adv Mphothu Thokoa
 Secretary
TRC CASES INQUIRY
 +27 69 008 8888
 TRC.secretary@trc-inquiry.org.za
 www.trc-inquiry.org.za



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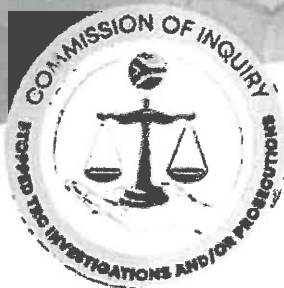
From: Lavelesani Ncube <lavelesani@kmnsinc.co.za>
Sent: Wednesday, December 3, 2025 2:44 PM
To: Secretary <secretary@trc-inquiry.org.za>; mongezi <mongezi@ntanga.co.za>
Cc: thabo <thabo@kmnsinc.co.za>; busisiwe <busisiwe@kmnsinc.co.za>; zukiswa <zukiswa@kmnsinc.co.za>
Subject: RE: NOTICE IN TERMS OF RULE 3.3 JACOB ZUMA

Dear Adv Thokoa,

The above matter refers.

Kindly find attached letter for your attention.

Regards,



03 December 2025

Kwinana Mbana Nkome Sibiya Inc
43 Wierda Road West
Wierda Valley
Sandton, 2196

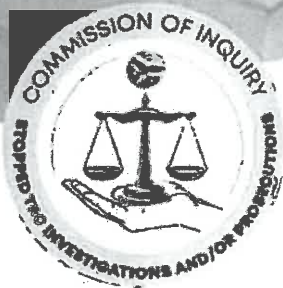
Your Ref: Mr. Kwinana/Mr. Ncube

Dear Sir/Madam,

RE: NOTICE IN TERMS OF RULE 3.3 JACOB ZUMA

1. In response to your letter dated 3 December 2025, requesting that I be recused for reasons outlined in your letter; the Commission deems it fit in the interest of the time available for the Commission to discharge its work to consider your client's request through the following Directives:
 - 1.1 Your client is directed to file his application for my recusal to the Commission by no later than 11 December 2025;
 - 1.2 Any answering affidavit by the Commission to be filed no later than 17 December 2025;
 - 1.3 Any reply to be filed no later than 22 December 2025;
 - 1.4 Written submissions to be filed by your client no later than 31 December 2025;

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- 1.5 Written submissions to be filed by the Commission no later than 6 January 2025; and
- 1.6 The Commission will decide my recusal on the papers filed with the Commission.

Regards,

Khampepe J
Chairperson

"B"**Lavelesani Ncube**

From: Lavelesani Ncube
Sent: Wednesday, 03 December 2025 2:45 PM
To: Secretary; mongezi
Cc: Thabo Kwinana; Busisiwe Sibiya; Zukiswa Mbana
Subject: RE: NOTICE IN TERMS OF RULE 3.3 JACOB ZUMA
Attachments: Letter to Adv Thokoa, Secretary of TRC Cases Commission - 03.12.2025.pdf
Importance: High

Dear Adv Thokoa,

The above matter refers.

Kindly find attached letter for your attention.

Regards,



Lavelesani Ncube
LLB (University of Fort Hare)
Office Administrator
e: lavelesani@kmnsinc.co.za | t: 011 462 5589 | c: 078 734 8177
f: 086 561 7741 | 43 Wierda Road West | Wierda Valley | Sandton 2196
www.kmnsinc.co.za

JA 2,



43 Wierda Road West | Wierda Valley | Sandton | 2196

t: 011 462 5589 | f: 086 561 7741 | Docex 48 Rosebank | PO Box 781276 | Sandton | 2146 | info@kmnsinc.co.za | www.kmnsinc.co.za

**THE SECRETARY OF THE COMMISSION
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**

EMAILS: secretary@trc-inquiry.org.za / mongezi@ntanga.co.za

ATTENTION: ADV THOKOA

Your reference

Our reference

Date

Mr. Kwinana/Mr. Ncube

03 December 2025

Dear Adv Thokoa,

RE: NOTICE IN TERMS OF RULE 3.3 JACOB ZUMA

1. As you are aware we act for Former President JG Zuma ("our client"). Thank you so much for the indulgence regarding the delays in the response to your Rule 3.3 Notice calling for our client to give evidence at the Commission of Inquiry Into Stopped Investigation or Prosecution Truth and Reconciliation Commission Cases ("the Commission"). We also thank you for copying us on the recent documents exchanged between the Commission and various parties. We have now finally had the opportunity to consult with our client adequately in respect of this matter. We are instructed to inform you as per the below.
2. Our client has been following the recent developments regarding the objections against the Chief Evidence Leader Adv I. Semanya SC with keen interest. For various reasons our client has elected not to get directly involved in the dispute. However for the record he was always in support of the objections raised. He chose to await the outcome of the relevant applications, including the ruling on whether counsel for the Calata Group to lead witnesses, which has since been delivered to our offices on 02 December 2025 and for which we thank you.
3. Among the reasons why our client had chosen not to enter the fray was that he has objections of his own which are not specifically directed at Adv Semanya SC but at the Chairperson of the Commission, the Honourable Justice Khampepe, pertaining to:-
 - 3.1. The own role personally played by the Chairperson in the entire saga involving Adv Semanya SC in that she has, *inter alia*, abdicated her duties, responsibilities and independence as the Chairperson

Kwinana Mbana Nkome Sibiyi Inc | Reg. No. 2017/135670/21

Directors: TS Kwinana B Juris (Unitra), LLB (Rhodes) | BB Sibiyi LLB (UJ) | Z Mbana LLB (WSU)

Consultant: S Gobile B. Tech - Internal Audit (WSU), MPA, LLB (Fort Hare)

Office Administrator: LG Ncube LLB (Fort Hare)

Candidate Attorneys: S Gaxa BA, LLB (Wits) | E Mhlanganyana LLB (Wits) | S Ndaba LLB (Fort Hare) | SS Kwinana BA, LLB (Wits)

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and allowed or condoned several transgressions, irregularities and/or unconstitutional conduct by him. *Inter alia*, the Chairperson aided and abetted Adv Semenya SC in dealing with the alleged conflict of interest on his part and turned a blind eye to his undue participation in engagements with witnesses in relation to the subject matter of his alleged conflict of interest and in breach of a directive of the Chairperson herself dated 19 September 2025. In so doing she has made herself directly and/or indirectly guilty of unconstitutional conduct and/or judicial misconduct. The recent ruling, which came as no surprise, is therefore tainted by the said bias and/or misconduct. In this regard, our client is in the process of instituting a parallel complaint to the appropriate authorities including the Judicial Service Commission.

- 3.2. In respect of the rights of our client specifically, Justice Khampepe, by her previous conduct, disposition and hostile attitude towards our client while and subsequent to presiding in previous litigation which led to his detention without trial, in which she displayed actual bias alternatively engendered a reasonable apprehension of bias towards him. This aspect is in relation to the content and surrounding circumstances of the matters reported as *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma 2021 (5) SA 1 (CC)* and *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State 2021 (11) BCLR 1263 (CC)*. To add insult to injury Justice Khampepe improperly expressed herself on the merits of these cases by giving a number of exclusive interviews to public media platforms after her retirement. As an example thereof, we attach, marked "X" a copy of an article which appeared on News24 dated 16 May 2022 and written by one Karyn Maughan, with the headline: "*We could not pander to Mr Zuma – Khampepe on why ConCourt had to send him to jail.*"
- 3.3. The various previous occupational connections of the Chairperson with the Truth and Reconciliation Commission and/or the National Prosecuting Authority which render her current position to be improper, inappropriate and recusable. Given the various positions she held in those institutions during periods which are relevant to the subject matter of the current investigation, it is highly unlikely and improbable that she can bring the requisite neutral mind to bear to this particular Commission of Inquiry.
4. Subject to ongoing investigations, the fuller details pertaining to the three separate objections raised above will be furnished at the appropriate stage if necessary. Therefore the list may or may not be exhaustive.
5. For now it is sufficient to register, as we hereby do, our client's objections as a result of which and/or until the issues are addressed, it would be premature to submit to the jurisdiction of the Commission by

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participating in its obviously tainted activities. In any event the outcome of the current recusal application brought by the NPA and others, reinforces the stance adopted by our client.

6. The purpose of this letter is therefore to demand the immediate recusal of the Chairperson in respect of any process which involves the rights and interests of our client alternatively from the Commission itself further alternatively to exempt our client from any participation in the Commission as presently constituted.
7. Kindly bring this letter to the attention of the Commission and advise us as to how it is proposed our client's objections may be taken forward and/or whether and if so in what form our client will be afforded the opportunity to make more detailed submissions in support of his stance as outlined above. Kindly do so on or before Monday 08 December 2025.
8. Needless to say, our client is willing to be guided by the Commission regarding the way forward, if any, in the handling of this matter. He specifically reserves all his rights and will pursue any legally available avenues in order to protect his threatened and/or violated rights.
9. We look forward to your urgent and considered response.

Yours faithfully,

KMNS INC.
per: THABO KWINANA

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POLITICS

INVESTIGATION



EXCLUSIVE | 'We could not pander to Mr Zuma' - Khampepe on why ConCourt had to send him to jail

🕒 16 May 2022

Karyn Maughan

news24

💬 Comments

📁 Gift article



Justice Sisi Khampepe. (Photo Sydney Seshibedi/Gallo Images)

Photo: Sydney Seshibedi/Gallo Images

J. A. Z.
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"C"

PRESIDENT RAMAPHOSA EXTENDS COMPLETION DATE FOR KHAMPEPE COMMISSION



Monday, 1 December 2025

President Cyril Ramaphosa has determined 31 July 2026 as the new date for the submission of the final report 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.

In May 2025, President Ramaphosa signed a proclamation for a judicial commission of inquiry chaired by retired Constitutional Court Judge Sisi Khampepe, assisted by retired Northern Cape Judge President Frans Diale Kgomo and Adv Andrea Gabriel SC.

The original Terms of Reference of the Commission provided that the Commission would complete its work within a period of 180 days from the date of the Proclamation and submit its report to the President within 60 days after the date on which the Commission completed its work.

President Ramaphosa has recognised that the Commission started its work late, that there are outstanding documentary responses; that there will be applications for cross-examination and that the Commission will be

A handwritten signature in black ink, appearing to be 'C. Ramaphosa', with a stylized flourish at the end.

in recess from mid-December 2025 to early January 2026.

The President has accordingly amended the Terms of Reference to provide that the Commission must complete its work on 29 May 2026 and submit its report by 31 July 2026.

President Ramaphosa says the extension will aid the Commission to complete its work without any further delay and to provide the country with a full account of the circumstances that gave rise to the establishment of the Commission.

Media enquiries: Vincent Magwenya, Spokesperson to the President – media@presidency.gov.za

Issued by: The Presidency
Pretoria


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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: JACOB ZUMA

EMAIL: mongezi@ntanga.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:
 - 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.⁹ 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's 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.

"PARTICULARS OF IMPLICATION

Special Dispensation on Political Pardons

289. *At a joint sitting of Parliament on 21 November 2007, President Thabo Mbeki announced a special process for the handling of pardon requests made by "people convicted for offences they claim were politically motivated, and who were not denied amnesty by the TRC." According to President Mbeki the aim was to assist the nation in resolving the "unfinished business" of the TRC. He said:*

"As a way forward and in the interest of nation-building, national reconciliation and the further enhancement of national cohesion, and in order to make a further break with matters which arise from the conflicts of the past, consideration has therefore been given to the use of the Presidential pardon to deal with this 'unfinished business.'"

290. *Mbeki assured members of Parliament that the new process would be consistent with "what the nation sought to achieve through the TRC," and would support the discharge of the President's "constitutional obligation to consider the requests for pardon from people who have already been convicted for offences they claim belong among the category of offences that were considered by the TRC Amnesty Committee." The use of the pardon power to accommodate perpetrators who had spurned the TRC amnesty process was in line with the recommendations of the ATT that were made in 2004.*

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^ NRO

291. Mbeki asked each political party represented in Parliament to appoint a representative, not necessarily an MP, to serve on a Pardons Reference Group (RG) charged with considering pardon requests and submitting recommendations to the President. Mbeki pledged that his pardoning decisions would be guided by the values and principles enshrined in the Constitution, as well as the "principles, criteria, and spirit" of the TRC.
292. Mbeki announced a window of opportunity for new pardon requests that would open on 15 January 2008 and close on 15 April 2008. Requests would be considered from applicants convicted of offences "of the nature considered by the TRC during the period up to 16 June 1999." A copy of Mbeki's address to Parliament is annexed marked **FA42**.
293. On 16 January 2008, the Presidency released a press statement announcing the beginning of the period of applications for political pardons. A copy of this press statement is annexed marked **FA43**. The deadline for applications was subsequently extended to the end of May. The press statement belied the real reason of the process, as it spoke of applicants being "considered for amnesty" rather than pardon.
294. The RG was formally constituted on 18 January 2008 at its first meeting with President Mbeki, during which the Terms of Reference for the RG were adopted. Dr Tertius Delpont was elected Chairperson (**Delpont**). On 24 January 2008, the DOJ announced that the twelve-page pardon application forms were available at all courts, prisons, DOJ regional offices and websites.
295. Shortly after the creation of the RG, various civil society organisations such as the Centre for the Study of Violence and Reconciliation (**CSV**R) sought to engage with RG. However, Delpont declined to meet with the organisations and refused to disclose the RG's terms of reference (which was only published



months after the launch of the process) or the list of persons who had applied for a political pardon. The 2300 strong list was only secured through a PAIA application towards the end of 2008. However, leaks to the media disclosed that the applicants included, amongst others:

- 295.1 Ferdi Barnard, former CCB operative who murdered Wits academic David Webster;*
- 295.2 Letlapa Mphahlele, the Pan Africanist Congress president who ordered the St James's Church massacre;*
- 295.3 Former apartheid police minister Adriaan Vlok, former police chief General Johann van der Merwe and the three co-accused in the attempted murder of Chikane;*
- 295.4 AWB members who had killed one black person and violently assaulted black people in Kuruman in 1995.*
- 296. The RG ultimately recommended to President Motlanthe, who was Mbeki's successor, that 150 persons be granted a political pardon, including the accused in the Chikane matter and the AWB members referred to above.*
- 297. The civil society organisations were eventually granted a meeting with Delpont and some RG members in July 2008 where they complained about the opaqueness of the process and the fact that victims had been entirely excluded from the programme. In a letter dated 7 August 2008, Delpont informed the civil society organisations of the RG's conclusion that neither the*

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Terms of Reference nor any law compelled the RG to "call for inputs by the public (in particular the victims)" and the RG accordingly would not accede to requests to incorporate victim input into the process.

298. *The civil society organisations made multiple attempts to persuade the RG and the President to change course and incorporate victims into the pardons process without success. The full history of these attempts is set out in the founding papers filed in the matter of CSV & Others vs The President, before the Pretoria High Court in case no. 15320/09, which can be made available on request.*
299. *In March 2009 several civil society organisations brought an urgent application in the Pretoria High Court seeking to interdict the President from issuing any pardons until victims and other interested parties were able to participate in the process and make their representations on each pardon application.*
300. *The civil society organisations submitted in its court papers that the special dispensation on political pardons amounted to an impermissible rerun of the TRC's amnesty process; unlawfully excluded the participation of victims; violated the rule of law; and infringed the rights of victims to dignity, equal treatment and freedom of expression. On 28 April 2009, Seriti J handed down judgment in which he granted an interim interdict restraining the President from handing down any pardons under the special dispensation for political pardons.*
301. *On 2 June 2009, Ryan Albutt, one of the AWB members convicted for carrying out a campaign of violent terror against black people in Kuruman approached the Constitutional Court to overturn the interim interdict stopping the political*



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pardon process from proceeding. He was joined in this endeavour by President Jacob Zuma. In February 2010, the Constitutional Court ruled that no political pardon could be issued without first affording the victims a hearing. Attempts were made thereafter by the DOJ to resurrect the Special Dispensation on Political Pardons by allowing victims and interested parties to make representations, but the process was eventually abandoned with no political pardons being granted.

TRC cases remain stuck

302. *In the PCLU's presentation of its performance for the financial year of 2007 –*

2008 to Parliament's Justice and Constitutional Development Portfolio Committee in March 2007, the following was noted by Ackermann in slide 8 on TRC prosecutions:

- *"Only partial success was achieved **due to intervening factors beyond the control of the unit.**"*
- *"Sixteen cases have been identified for investigation and possible prosecution." (Bold added).*

303. *The cryptic reference to "intervening factors beyond the control of the unit" could only have been the political interference alluded to above and to be described in detail below. The sixteen cases were not identified and none of these cases were taken forward. A copy of the presentation is annexed hereto marked **FA44**.*

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304. *With the political suppression of the TRC cases now in full swing, there was a hiatus of activity for several years, notwithstanding the agitation of families for action. The only notable development in this period was the disappearance of the investigation dockets in the Nokuthula Simelane and Cradock Four cases.*
305. *It can be safely assumed that little or no work was carried out by the NPA, SAPS or DSO on the TRC cases during 2008. Acting NDPP Mpshe had already relieved Ackermann of his responsibilities in respect of the TRC cases. He could hardly be expected to champion the TRC cases going forward, and indeed he did not. Although Ackermann was still the head of the PCLU he was no longer permitted to work on the TRC cases, and the files were left largely unattended. He retired from the NPA in 2013. In any event, at that stage, no investigator within state structures would touch the cases.*
306. *Macadam records in his affidavit filed in Rodrigues (FA5), that in early 2009, Mpshe summoned him to his office and showed him a letter written by SAPS indicating that it was withdrawing from the ITT.*
- 306.1 *Presumably the SAPS took the view that the TRC cases were dead in the water and there was no point in serving on the task team which in practice was doing no work. In addition, following the judgment of Legodi J, the ITT no longer enjoyed a legal basis with the setting aside of the amendments to the Prosecution Policy in December 2008.*
- 306.2 *Since the SAPS had not been investigating the TRC cases their withdrawal did not mean much. However, according to Macadam it would mean that going forward, the TRC matters would again not be*

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investigated because a decision had already been taken to disband the DSO.

- 306.3 *Mpshe asked Macadam to negotiate with SAPS and try to get them to agree to investigate the cases. Mpshe also told Macadam to take over the TRC cases.*
307. *It is hardly surprising that Macadam concluded his 2018 affidavit with this blunt statement: "[t]hese documents speak for themselves and go a long way in explaining why from 2003 the PCLU constantly struggled to have TRC cases investigated."*
308. *Macadam approached Ackermann for advice, and he disclosed that he had previously closed some matters which had not required investigation and handed over a list of some ten cases. Macadam attached to his affidavit as annex RCM6 (at p821) a trail of emails between himself and various role-players in his attempts to get the remaining TRC cases investigated. He initially met with Rayman Lalla, then Divisional Head of the Detective Service of SAPS, who informed him that the National Commissioner had decided that the cases must be handled by the DPCI.*
309. *On 18 May 2009, Macadam sent the following email to Deputy NDPP, Adv Willie Hofmeyr (RCM6 at p821), at a time when there was an expectation that Hofmeyr was about to be appointed the new head of the DPCI:*

*"I met this morning with Commissioner Lalla concerning the appointment of SAPS investigators to investigate the TRC cases where victims have asked the NPA to look at prosecutions. **We have been taking quite a beating due to the fact that nothing has been done on these matters for***

W. Hofmeyr
NPS

*a number of years and in fact, in certain cases, the victims are threatening us with mandamus applications. In this regard, Commissioner Lalla asked me to provide him with the names of three/four investigators who had the necessary experience. **We are only looking at a small number of cases, plus minus nine.** Obviously, no progress at all will be made if the investigators do not have previous knowledge of the relevant Apartheid security structures and role players therein.*

*The only persons I could think of off-hand, were CSI Marion and three/four of his KZN DSO investigators, who were previously involved with the Goldstone Commission and ITU. All these persons have indicated their willingness to transfer to SAPS. **Commissioner Lalla indicated that the TRC investigations would constitute a special tasking and the investigators would be permitted to finalise these cases before taking on other commitments.** He also indicated that he would pay the costs of the investigations from his budget. This would ensure that they could deal with these matters irrespective of whether they are located in DPCI or any other police structure. He asked me to communicate directly with you on this issue."* (Bold added).

310. *However, Hofmeyr was not appointed to head up the DPCI, so Macadam had to approach the SAPS Commissioner again. On 1 July 2009 he wrote an email (RCM6 (at p822) to Superintendent Colla Bezuidenhout at the SAPS headquarters seeking a meeting with the Commissioner to discuss the TRC cases. He advised in the email:*

*"We are under intense pressure and have been called upon to report on progress to the Minister and the Justice Portfolio Committee. **The one matter which requires investigation prescribes on 12 September***

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200G and this case must be fully investigated and the family afforded an opportunity to exercise their right to a private prosecution before the crime prescribes.” (Bold added)

311. *Macadam was told to meet with Commissioner Anwar Dramat, the newly appointed Head of the DPCI. He then made a number of unsuccessful attempts to secure a meeting with Dramat. During this period, the unidentified case that was due to prescribe on 12 September 2009, prescribed without being taken further. It can be safely assumed that a large number of other crimes associated with the TRC cases prescribed during this period.*
312. *I am advised that at this time the family of the late Nokuthula Simelane and their representatives were working behind the scenes to persuade the Minister of Police to appoint investigators to take on the TRC cases.*
313. *Ultimately Macadam met with Assistant Commissioner Godfrey Lebeya on 26 November 2009 where the issue of conducting investigations was discussed resulting in Macadam addressing a letter to Lebeya on 18 January 2010, which is attached to Macadam’s affidavit (FA5) as annex RCM7 (at p826). The letter is reproduced below:*

“My letter dated 13 July 2009, addressed to Deputy National Commissioner Dramat and Divisional Commissioner Lalla, and our meeting of 26 November 2009 have reference.

The issue related to the appointment of investigators to investigate the 11 matters identified by the NPA, which were itemised in my letter of 13 July 2009. Subsequently, the Acting National Director of Public Prosecutions



declined to prosecute in the Lubowski matter and consequently, only the remaining 10 cases on the list required attention.

Senior Superintendent Bester of your office attended our meeting and informed you that he was in possession of a number of further dockets which he felt also required investigation. On 6 December 200G, I had a meeting with Senior Superintendent Bester and established that these dockets related to cases against the Liberation Movements in respect of which a decision was taken in 2004 by the then National Director not to prosecute. It should be noted that in the main, all the suspects implicated in the dockets had applied for and received amnesty. I therefore informed Senior Superintendent Bester that there was no basis upon which these cases could be reopened.

Consequently, only the remaining 10 cases on the list require attention. Since you raised the sensitivity of the matters with me, the National Director of Public Prosecutions was given a full written briefing on the matters. I had a meeting with him today and he indicated that SAPS should in fact investigate all the matters which required investigation. The matters should be referred to my office once the investigations have been concluded. Should you require any guidance as to how the matters should be investigated, you are at liberty to approach me for any such assistance which you might require.

Given the nature of the cases, it may be desirable that we meet to discuss the issues in person and in this regard, I would be grateful if you could indicate when you would be available to meet with me." (Bold added).

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314. Senior Superintendent Louis Bester was appointed to oversee the investigations of the ten remaining TRC cases. It appeared that Bester was particularly interested in pursuing cases against members of the former liberation movements. As it transpired, he made no progress in the cases against former apartheid security officers and operatives.
315. On 1 December 2009, President Jacob Zuma appointed Adv Menzi Simelane as NDPP. This was announced in a government press release dated 30 November 2009, ironically titled "Simelane fit to hold office." The appointment was made notwithstanding the damning findings made against him by the Ginwala Enquiry.
316. While he was DOJ Director General, Simelane had pressed Pikoli to remove Ackermann from the TRC cases. I can only speculate, but I believe that the probabilities are high that it was also Simelane who asked Acting NDPP Mpshe to remove Ackermann from the TRC cases, following the suspension of Pikoli. The arrival of Adv Simelane at the helm of the NPA was to doom the TRC cases to further neglect.
317. According to Macadam, one of the first steps taken by Adv Simelane was to instruct him to oversee various investigations of corruption cases being conducted by the DPCI in the Northern Cape. He thereafter appointed Macadam to represent the NPA in two civil matters where decisions of the NPA not to prosecute international crimes (known as the Zimbabwe Torture Docket case) were challenged. Macadam was also deflected with cases in which complaints had been made against the NPA for failing to prosecute



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current and former heads of state for crimes against humanity. This workload effectively prevented Macadam from returning to the TRC cases, but he nonetheless opened more cases "due to representations being received in new matters."

318. *An example of the neglect was the failure of both the DOJ and the NPA to orchestrate the reconvening of an Amnesty Committee to rehear the amnesty applications of Martin van Zyl and Johannes Koole in the PEBCO 3 matter, as had been ordered by the High Court in 2009. The NPA and DOJ jointly arranged the withdrawal of charges against Van Zyl and Koole, pending the outcome of the reconvened Amnesty Committee, which they never established, thereby guaranteeing impunity for the two suspects who went to their graves without facing justice.*
319. *The NPA Annual Report 2009/10 noted that the TRC cases had to be investigated before prosecutorial decisions could be made but that "since 2003" it had "struggled to secure the necessary cooperation in this regard":*

*"TRC cases: The PCLU is required to advise the NDPP in making decisions whether or not to prosecute in cases arising from the TRC process. Matters need to be fully investigated before any final prosecution decision can be made. **Since 2003, the NPA has struggled to secure the necessary cooperation in this regard.** With the establishment of the DPCI, the responsibility for such investigations was transferred to this unit. **The PCLU had to***

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recommence its negotiations de novo. Currently, the DPCI has indicated that it will conduct the necessary investigations, but only after the conclusion of the 2010 FIFA World Cup, due to the fact that it has a number of special responsibilities in connection with this event." (Bold added).

320. *The relevant pages from this annual report are annexed hereto marked **FA45**.*

The full report can be provided on request. It is noted that the DPCI indicated that it would not look at the TRC cases until after the 2010 FIFA World Cup, which only concluded on 11 July 2010. However, even after the World Cup there is little evidence that the TRC cases were taken forward.

321. *It is significant that this was the last mention of the TRC cases in the NPA's annual reports until 2016, which reflects the general neglect of these cases during those years. There were only references to the work of the NPA's Missing Persons Task Team (MPTT), which had done pioneering work locating the graves of persons killed during apartheid, exhuming and identifying the remains, and facilitating their reburial. The MPTT is not involved in the prosecution of cases.*

322. *Adv Menzi Simelane appeared before the Justice Portfolio Committee on 12 April 2010 where he confirmed that the NPA was not prosecuting any TRC cases. The minutes, a copy of which is annexed hereto marked **FA46** reflect the following:*

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"Adv Simelane said that there were no cases that the NPA was currently prosecuting regarding post TRC matters. The reason being that the dockets were still with the police for investigation."

323. *The following year, Adv Simelane appeared before the Justice Portfolio Committee on 20 March 2011 to discuss the NPA's Strategic Plan for 2011. The minutes reflect the following discussion in which Simelane claimed that the issue of the DPCI not assisting the PCLU was now solved:*

"Ms Smuts asked if the NDPP could confirm if the DPCI was not indeed assisting the PCLU in post Truth and Reconciliation (TRC) Unit matters. Adv Simelane replied that the DPCI not assisting the PCLU was an old matter as there were no problems now."

324. *This was the last time the TRC cases appeared in the minutes of the Justice Portfolio Committee until 2017. This was remarkable given that there was zero progress on the TRC cases in this 6-year period.*
325. *Following the Supreme Court of Appeal ruling on 1 December 2011 setting aside Adv Menzi's Simelane appointment as NDPP, Adv Nomgcobo Jiba was appointed Acting National Director of Public Prosecutions and held the*

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position until 4 August 2013. It appeared that for certain times during this period, Dr Silas Ramaite also acted in this post.

326. In October 2012, the Constitutional Court confirmed that President Jacob Zuma's appointment of Adv Simelane as NDPP was invalid. In a unanimous judgment the Court held that "dishonesty is inconsistent with the conscientiousness and integrity required for the proper execution of the responsibilities of the NDPP."

327. In August 2013, President Zuma appointed Mr. Mxolisi Sandile Oliver Nxasana as NDPP, and he assumed the post on 1 October 2013.

327.1 When Nxasana was appointed as the NDPP, he removed Macadam from his duties at the PCLU in order to act as a dedicated prosecutor in foreign bribery cases.

327.2 Adv Shaun Abrahams, then a Senior State Advocate, was appointed to take the TRC matters over from Macadam. It is evident that Abrahams made little or no progress in the TRC cases while he was leading the PCLU.

327.3 After a protracted enquiry into his fitness to hold office, Nxasana stepped down as NDPP on 1 June 2015 and thereafter Abrahams was appointed NDPP.

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WAS THERE A POLITICAL AGREEMENT NOT TO PROSECUTE?

370. While the evidence uncovered points to a desire on the part of the government to close down the TRC cases in order to protect ANC members from prosecution, there have also been public statements raising the possibility of an agreement or 'informal agreement' between political stakeholders not to prosecute apartheid-era crimes.
371. In a parliamentary question (NW2290) put to the Minister of Justice on 10 November 2020, Mr G Hendricks of the Al Jamah-Ah party asked for the reasons why no perpetrators of Apartheid-era killings of leaders such as Imam Haron, Steve Biko, Suliman 'Babla' Saloogee and hundreds of others had been prosecuted. He asked in particular, if the reason was the result of any "agreement, secret or otherwise" and "if so, was the agreement legal or political?" The Minister replied as follows: "The NPA is unaware of such an agreement."
372. On 5 July 2021, the FW de Klerk Foundation released an editorial titled "The NPA's Decision to Prosecute 'Apartheid Era' Crimes", a copy of which is
- annexed hereto as **FA51**. The editorial referred to an 'informal agreement' not to prosecute apartheid era crimes:

"Because of an informal agreement between the ANC leadership and


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former operatives of the pre-1994 government, the NPA suspended its prosecutions of apartheid era crimes.”

373. *In response to this editorial, Good Party secretary general Brett Herron said in a media article (Tymon Smith, A Renewed Commitment to the TRC Cases, Mail & Guardian, 26 July 2021) that De Klerk’s reference to the agreement “confirms one of South Africa’s most disgraceful secrets” and that it:*

“further confirms that the NPA was captured long before the term ‘state capture’ rose to the prominence it has, and that the ANC had accomplices in the genesis of our current capture pandemic, the party of apartheid led by De Klerk”.

374. *Herron described the editorial as “a thinly veiled threat to the NPA to stay in its lane or the ANC will face consequences”. He added that “what the De Klerk Foundation really wants is for the terms of its informal amnesty deal with the ANC to be upheld by the NPA”. A copy of this article is annexed hereto marked **FA52**.*

375. *The meeting report of the Justice Portfolio Committee meeting of*

8 December 2021, disclosed that Hendricks asked Minister Ronald Lamola whether the government “had been hampered by decisions taken at the Convention for a Democratic South Africa (CODESA) not to prosecute the

J. W. Z.
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TRC cases." He said, "Minister Lamola had to be honest with South Africa." The Minister said he "was not aware of any agreements which provided that there would be no prosecutions of TRC matters." The relevant extracts of this meeting report are annexed hereto marked **FA53**.

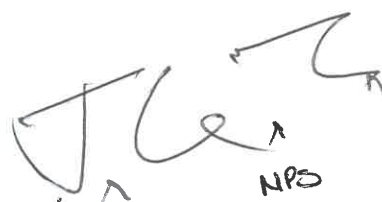
Deliberations on a further immunity

376. During July 1998, former SADF Generals called for a blanket amnesty for all sides. See the SAPA press release dated 14 July 1998 annexed hereto marked **FA54**.

377. In March 1999, the TRC denied the amnesty application of 37 ANC leaders, which included then Deputy President Mbeki.

377.1. The application was denied since it did not disclose any individual offences. See the SAPA press release dated 4 March 1999 annexed hereto marked **FA55**.

377.2. Shortly thereafter, Mbeki informed Parliament that government was considering further amnesty proposals that had been put forward by



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SADF generals. See the article titled 'Generals, ANC members talk about amnesty' dated 1 January 2002, annexed hereto marked **FA56**.

377.3. Mbeki also sought to adjust the TRC legislation to allow for the grant of amnesty for collective responsibility, without the need for individual disclosure. An ANC spokesperson suggested that the SADF generals had promised to "come clean" but only if they were guaranteed amnesty. See the SAPA press release titled "Mbeki wants changes to TRC rules on amnesty" dated 22 May 1999 annexed hereto marked **FA57**.

378. Bubenzer in his book in a chapter titled "Bargaining Over the TRC's Legacy" detailed secret consultations between the ANC government and representatives of the SADF and the security police from 1998 until early 2004.

The main aim appeared to be to reach agreement on a legislative solution on how to avoid prosecutions in the wake of the TRC. A copy of the relevant extracts from Bubenzer's book are annexed hereto marked **FA58**.

379. According to an interview conducted by Bubenzer with former police commissioner and head of the Foundation for Equality Before the Law (FEL), Johann van der Merwe, in Pretoria on 5 May 2006, former President F.W. de Klerk assumed a central role in the consultations. According to Bubenzer:



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- 379.1. *De Klerk often consulted with President Mbeki directly or with other high- ranking members of the government.*
- 379.2. *The FEL's aim was to find a solution to avoid the prosecution of former members of the SAP who had not received amnesty.*
- 379.3. *Since a general amnesty was not politically or constitutionally feasible, the FEL proposed an indemnity procedure based on admission of the crime committed, but without the need to make full disclosure.*
- 379.4. *The talks continued until 2004, without an agreement being reached.*
380. *However, the approach proposed by FEL in relation to the 'admission of crimes but no full disclosure' was adopted by the Pardons Reference Group established by President Mbeki under the Special Dispensation for Political Pardons in 2007.*
381. *According to an interview conducted by Bubenzer with former SADF General Jan Geldenhuys (Geldenhuys) in Pretoria on 10 May 2006, consultations between government and a group of high-ranking former generals of the SADF commenced during 1998.*
- 381.1. *Former Chief of the SADF, General Constand Viljoen was approached by Jacob Zuma, then Deputy President of the ANC with the aim of*



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discussing questions of criminal accountability arising from the past. Viljoen referred Zuma to Geldenhuys and the Contact Bureau (known in Afrikaans as the Kontak Buro).

- 381.2. *As with the police negotiations, these talks were aimed at finding a mutual arrangement to avoid post TRC trials through a new indemnity mechanism. The government was represented by Jacob Zuma, who became Deputy President of South Africa in June 1999 (Zuma).*
- 381.3. *The talks were mediated and facilitated by Johannesburg businessman Jürgen Kögl, who was closely connected to leading ANC members. Apart from Zuma, other high-ranking members of the ANC, such as Penuell Maduna (then Justice Minister), Mathews Phosa, Sidney Mufamadi and Charles Nqakula also participated from time to time. On various occasions Thabo Mbeki was also present, initially in his capacity as Deputy President, and later as President.*
- 381.4. *The SADF was represented by Geldenhuys and other generals. Both sides had legal advisers present. The talks continued until early 2003, with a few follow-up meetings held in 2004.*
- 381.5. *Bubenzer explored the motivation of the government in reaching out to the SADF generals in two interviews conducted with Jürgen Kögl on 12 May 2006 and 14 June 2006. Apparently, the government was, for amongst other reasons, interested in persuading the generals to come clean on its past third force operations in KwaZulu Natal and in particular to disclose the sites of arms caches, which could be used in future political violence.*

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382. On 21 December 2019, investigative journalist and author, Michael Schmidt, conducted an interview in Hartbeespoort with Major-General Dirk Marais (**Marais**), former Deputy Chief of the Army and the Convenor of the SADF Contact Bureau. Schmidt's confirmatory affidavit is annexed hereto marked **FA59**. Schmidt writes in his book 'Death Flight' that, according to Marais, the government was seeking a quid pro quo. Copies of the relevant extracts from 'Death Flight' are annexed hereto marked **FA60**. Marais claimed that Mbeki indicated in their discussions that:

"They don't want us to be charged – and they don't want them to be charged"

383. Marais said in the interview that on his side at the talks were former Defence Minister General Magnus Malan, former Chiefs of the Defence Force Generals Constand Viljoen and Jannie Geldenhuys, and former Chief of the Army General Kat Liebenberg – although sometimes they brought in other generals such as former Surgeon-General Niël Knobel, or one of the former Chiefs of the Air Force, as required.

384. Marais told Schmidt that on the ANC/Government side, Mbeki's team usually consisted of the "security cluster", which initially included Minister of Defence Joe Modise, Minister of Safety and Security Sydney Mufamadi and Minister of Justice Dullah Omar. According to Schmidt, when Mbeki became President, Zuma's "security cluster" team would most likely have included Minister of Defence Mosiuoa Lekota, Minister of Justice Penuell Maduna

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(replaced by Brigitte Mabandla in Mbeki's second Cabinet), Minister of Intelligence Joe Nhlanhla (replaced by Ronnie Kasrils), and Minister of Safety and Security Steve Tshwete (replaced by Charles Nqakula).

385. *On 5 May 2020, former Minister of Intelligence Kasrils emailed Schmidt regarding the ANC-SADF talks advising that he had 'no knowledge of virtually all the meetings and developments arising from such talks.' Schmidt no longer has a copy of this email.*

386. *Schmidt notes in his book, that during the interview, Marais showed him an unsigned handwritten letter he prepared for the signature of the former Chiefs of the SADF in early 2004. Marais permitted Schmidt to take photographs of the letter. The letter was addressed to Deputy President Zuma, and it recalled the initiation of the series of secret, high-level talks between the government and former SADF Generals, a copy of which is annexed hereto marked **FA61**. The letter stated inter alia:*

"A process of communicating between the ANC initially and the government lately with the former chiefs of the SA Defence Force was initiated by the Deputy President of South Africa Mr T. Mbeki when he approached General C.L. Viljoen in 19? (sic). General Viljoen after consultation with the former Chiefs of the Defence Force within the structure of the SADF Contact Bureau conveyed our preparedness to communicate with Mr Mbeki in his capacity as Deputy President and President of the NEC of the ANC.

A convenor, Mr J. Kögl, apparently empowered by Mr Mbeki, arranged for a meeting at his house in Johannesburg. That meeting was in the

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form of discussions followed by a dinner hosted by Mr Kögl. It was attended by Mr Mbeki and various of his ministers as well as the Premier of Mpumalanga Mr M. Phosa, [leader of an ANC lobby arguing that its members be protected from prosecution], and by us the former Chiefs of the SADF.

There was enthusiastic agreement that the commenced communication should be continued and that more meetings should follow. We, the former Chiefs of the SADF, being aware of the Deputy President's tight work schedule, suggested that he appoint one of his ministers to represent the ANC in future deliberations. Mr Mbeki, however expressed the opinion that the process of communication, which was mutually agreed to, was so important to him that he preferred to remain the prime representative of the ANC in future deliberations.


Many deliberations followed and mutual agreements were reached. When Mr Mbeki could not attend, he authorised somebody, usually a minister, and later on when he became president in 1999, you [Deputy President Jacob Zuma] represented him.

In execution of mutual decisions, much effort was put in by the Contact Bureau and some of your ministers to prepare papers and submissions for acceptance by the Deputy President and later on the President.

In similar fashion, we the former Chiefs of the SADF as members of the forum were flown to Cape Town for discussions with Ministers Maduna and Ngakula and thereafter with you on 17 February 2003."

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387. *Former Premier of Mpumalanga, Mr Mathews Phosa, in a telephonic call to Schmidt on 2 June 2020, denied the claim of Marais that he had been involved in an ANC lobby pursuing protection from prosecution.*
388. *Bubenger writes that Geldenhuys and Kögl advised him that by the end of 2002, the consulting parties had agreed on a detailed proposal for the enactment of a legal mechanism which amounted to a new amnesty. It envisaged an amendment to the Criminal Procedure Act to allow for a new kind of special plea based on the TRC's amnesty criteria, followed by an inquiry by the presiding judge.*
389. *By late 2002 the proposal and draft legislation had been finalised by the Justice Department and was ready to be presented to Parliament for enactment. However, it first had to be approved by President Mbeki, who ultimately rejected it in early 2003. Nonetheless, as has been set out above, the essential ideas remerged in the subsequent amendments to the Prosecution Policy.*
390. *At the ANC's 51st national conference in December 2002 in Stellenbosch, a discussion of guidelines for a broad national amnesty, possibly in the form of presidential pardons, was scheduled. According to the head of the ANC presidency, Smuts Ngonyama, the ANC supported the idea of introducing a new amnesty law. He added that his party was generally against running trials in the style of the Nuremberg trials, since this would occur at the cost of nation- building. I attach hereto a copy of a news article marked FA62.*


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391. *Prior to Mbeki's rejection of the amnesty legislation in early 2003, the SADF generals appeared to be on the brink of a breakthrough. Marais advised Schmidt in the aforesaid interview that after 7 years of negotiations, the generals and the Cabinet's security cluster had agreed on a legal framework for a post-TRC amnesty process. According to Marais the government arranged for "a law writer in Cape Town" to come up with the new legislation.*
392. *On 17 February 2003, a delegation of SADF generals led by Geldenhuys met with Justice Minister Penuell Maduna and Police Minister Charles Nqakula in Cape Town. The law drafter (a state official in the Department of Justice) was called in to read out the proposed legislation. Marais indicated to Schmidt:*
- "... and when he finished, we said 'But that's got nothing to do with us' ... because they [said] they will grant amnesty to everyone who will make a full statement of his [crimes committed] so General Geldenhuys said 'No, we don't need that. All our people who wanted to make statements and ask for forgiveness already went to the TRC. Our other people ... don't have to do that, so this means nothing to us The whole thing collapsed there This whole conversation collapsed..." (At page 146 of Death Flight).*
393. *According to Schmidt, the differences between the sides were now irreconcilable: the generals wanted a post TRC law granting a new blanket*

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amnesty with no disclosure required – but the government appeared only willing to offer an amnesty based on full disclosure to be decided on a case-by-case basis.

394. *The talks between the SADF Generals and the government came to a close during 2004, without resolution, as was evident from Marais' 2004 letter to Deputy President Zuma referred to above:*

"In spite of such submissions and apparent acceptances, little notable implementation was effected by the ANC or government. ...

Agreement on outstanding matters was again confirmed, yet more than a year later, no sign of implementation has become apparent, neither was there any effort on your behalf to inform us of any progress which could lead to eventual implementation.

In view of the above, you are requested to inform us of the desirability from your point of view to keep the door open for further co-operation."

395. *Deputy President Zuma did not respond to the letter.*

Compilation of dockets and threats of private prosecutions

396. *At least two organisations largely representing the interests of the former regime, the FEL and AfriForum, have called for prosecutions of ANC and*

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members, and threatened private prosecutions against ANC members and civil litigation if their members are prosecuted. Examples of such public statements are annexed hereto marked **FA63**. It appears that such threats may have played a role in shaping the approach of the government to the TRC cases.

397. In an interview conducted by Bubenzer with Johann van der Merwe in Pretoria on 5 May 2006, the latter claimed that the FEL, represented by attorney Jan Wagener, had compiled dockets for the prosecution of top ANC members, including President Mbeki. Adv Jaap Cilliers SC, who had represented Wouter Basson, apparently evaluated the dockets and claimed that the dockets contained sufficient evidence to support criminal charges. The PCLU requested the FEL to hand over the dockets for their consideration, but FEL refused to do so, claiming that would only be used if apartheid era officials were targeted for prosecution. The claimed dockets have never been handed over to the authorities.
398. Wagener, during his interview with Bubenzer in Pretoria on 8 May 2006, claimed that the threat of the FEL dockets played a role in persuading President Mbeki and the government not to proceed with the arrests in 2004 of the suspects behind the poisoning of Chikane.
399. According to Bubenzer, General Jan Geldenhuys told him at an interview in Pretoria on 15 May 2006, that the former SADF generals were also of the view that the issue of potential criminal liability of ANC members was "a major consideration for the government" and the former military would take

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the same steps as FEL if they were charged.

400. *This is one of the key questions that only an independent commission of inquiry can resolve.*

Former President Mbeki denies involvement in political interference

401. *In an article titled "Long-awaited NPA report gives no answers on ANC govt's alleged blocking of apartheid trials" published by News24 on 21 February*

*2024, journalist Karyn Maughan pointed to uncontested evidence from various court cases demonstrating that "powerful Mbeki administration officials blocked the prosecution of apartheid cases". A copy of this article is annexed hereto marked **FA64**. Former President Mbeki was approached for comment, but his foundation, the Thabo Mbeki Foundation (TMF), referred enquiries to the current government.*

402. *However, on 1 March 2024, the TMF released a statement titled "Statement by former President Thabo Mbeki on allegations of NPA interference by the Executive", a copy of which is annexed hereto marked **FA65**. In this statement Mbeki strenuously denied any involvement in the suppression of the TRC cases:*

"During the years I was in government, we never interfered in the work of the National Prosecuting Authority (NPA). The executive never prevented the prosecutors from pursuing the cases referred to

J. C. Z.
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the NPA by the Truth and Reconciliation Commission.

I insist on this despite a 2021 Supreme Court of Appeal judgment which found, on the strength of uncontested submissions by former National Director of Public Prosecutions (NDPP), Advocate Vusi Pikoli, that the NPA "investigations into the TRC cases were stopped as a result of an executive decision" which amounted to "interference with the NPA."

I repeat, no such interference ever took place. If the investigations Adv Pikoli referred to were stopped, they were stopped by the NPA and not at the behest of the Government as alleged by the Advocate. There is no record of a single instance when the NPA stopped investigating and prosecuting any case on account of the so-called "executive interference" – at least not during the period 1999 - 2008."

403. *Former President Mbeki asked why the NPA succumbed to political pressure and challenged the NPA to produce any illegal instruction from his government stopping the TRC cases:*

"There are some questions which the NPA must answer honestly.

Who in the executive instructed the NPA not to do its work? Will the NPA publish this 'instruction' which, presumably, will be in its archives? Why did the NPA accept and respect what would have patently been an illegal instruction?

Instead of propagating falsehoods, the NPA must investigate and

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prosecute the cases referred to it by the TRC.

I also recall that the same Pikoli who allegedly buckled under pressure of "executive interference" concerning the TRC cases, earned a lot of respect by portraying himself as an independent and principled NDPP who defied an "all too powerful" President Mbeki, who was supposedly hell-bent on stopping him from investigating and arresting the late former National Commissioner of Police, Jackie Selebi.

The question arises, what happened to his cherished independence and commitment to principle when he acquiesced to 'members of the executive' on the TRC cases?"

404. *Mbeki claimed that he and his administration always acted in accordance with the Constitution, and he called on the NPA to demonstrate integrity by apologising to victims for not prosecuting the TRC cases:*

"Conveniently, some people forget that the ANC was the principal architect of the Constitution of the Republic. During the years when I served as Deputy President and President of the Republic, I, together with my colleagues in Government, always bore this in mind and acted knowing that the Constitutional prescripts we helped to negotiate were binding on us.

There was never any Minister of Justice during those years who was ever authorised to instruct any NDPP to act in one way or another.

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No NDPP, including Pikoli, ever approached me to complain that he/she had been instructed by a Minister, or any other official, to violate the independence of the NPA as prescribed by the Constitution.

The NPA must demonstrate enough integrity by apologising for not processing the TRC cases, rather than engage in dishonourable behaviour of trying to hide behind a fig leaf which is nothing more than pure fabrication."

405. *The denials of former President Mbeki are not consistent with the brazen suppression of the TRC cases that occurred during his administration, and which has been set out above. It is for an independent commission of inquiry to consider and test the veracity of the denials of former President Mbeki."*

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.

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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 at secretary@trc-inquiry.co.za.

DATED at SCI-BONO DISCOVERY CENTRE 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.


NPS

"E"**Lavelesani Ncube**

From: Lavelesani Ncube
Sent: Thursday, 11 December 2025 1:08 PM
To: Secretary; mongezi
Cc: Thabo Kwinana; Busisiwe Sibiya; Zukiswa Mbana
Subject: RE: FORMER PRESIDENT J.G. ZUMA // YOUR RULE 3.3 NOTICE
Attachments: Letter to Adv Thokoa, TRC Secretary - 11.12.2025.pdf

Importance: High

Dear Adv Thokoa,

The above matter refers.

Kindly find attached letter for your attention.

Regards,



Lavelesani Ncube
LLB (University of Fort Hare) *
Office Administrator
e: lavelesani@kmnsinc.co.za | t: 011 462 5589 | c: 078 734 8177
f: 086 561 7741 | 43 Wierda Road West | Wierda Valley | Sandton 2196
www.kmnsinc.co.za

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NPO



43 Wierda Road West | Wierda Valley | Sandton | 2196

t: 011 462 5589 | f: 086 561 7741 | Docex 48 Rosebank | PO Box 781276 | Sandton | 2146 | info@kmnsinc.co.za | www.kmnsinc.co.za

**THE SECRETARY OF THE COMMISSION
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**

EMAILS: secretary@trc-inquiry.org.za / mongezi@ntanga.co.za

ATTENTION: ADV THOKOA

Your reference

Our reference

Date

Mr. Kwinana/Mr. Ncube

11 December 2025

Dear Adv Thokoa,

RE: FORMER PRESIDENT J.G. ZUMA // YOUR RULE 3.3 NOTICE

1. We refer to the Commission's response letter dated 03 December 2025. We are instructed to convey as per the below.
2. The directive of the Chairperson was premature since no application had been made at that stage. In any event the directive is viewed as a unilateral imposition of the timetable which is unfair and unreasonable in the circumstances.
3. Be that as it may, for the sake of progress and purely out of an abundance of caution, our client has nevertheless elected to submit his application as soon as possible and in spite of his brief absence from the country until his return only yesterday.
4. However and due to the absence of his legal representatives because of the pre-planned December break, it will not be possible to comply with the filing of the application, the replying affidavit and/or the heads of argument on 11, 22 and 31 December 2025, respectively.
5. We also note that the President has extended the term of the Commission to the end of May 2026.
6. Given all of the above, the provisions in the applicable Rules and the fact that the Commission itself is taking a break from mid-December till early January, it is our client's request that:-

Kwinana Mbana Nkome Sibiyi Inc | Reg. No. 2017/135670/21

Directors: TS Kwinana B Juris (Unitra), LLB (Rhodes) | BB Sibiyi LLB (UJ) | Z Mbana LLB (WSU)

Consultant: S Gobile B. Tech - Internal Audit (WSU), MPA, LLB (Fort Hare)

Office Administrator: LG Ncube LLB (Fort Hare)

Candidate Attorneys: S Gaxa BA, LLB (Wits) | E Mehlananya LLB (Wits) | S Ndaba LLB (Fort Hare) | SS Kwinana BA, LLB (Wits)

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- 6.1. he files his application by no later than 15 December 2025;
 - 6.2. his replying affidavit be filed by no later than 12 January 2026 when his attorneys resume their duties; and
 - 6.3. his heads of argument be submitted by no later than 16 January 2026.
7. Finally it is our considered view that the application ought to be presented orally and in public in line with previous practice, the Rules and the principles of openness and transparency. If this is accepted, then the application may be heard on or about 23 January 2025.
 8. All our client's rights are specifically reserved and not abandoned in any manner whatsoever.
 9. Kindly convey this letter to the Commission and revert as soon as possible as to whether it is amenable to our client's proposals. If so, please also indicate the dates on which the Commission will reciprocally file its documents in the recusal application.

Yours faithfully,

KMNS INC.
per: THABO KWINANA

2 NRS



"F"

Re: FORMER PRESIDENT J.G. ZUMA // YOUR RULE 3.3 NOTICE

From Secretary <secretary@trc-inquiry.org.za>

Date Thu 12/11/2025 6:25 PM

To Lavelesani Ncube <lavelesani@kmnsinc.co.za>; mongezi <mongezi@ntanga.co.za>

Cc Thabo Kwinana <thabo@kmnsinc.co.za>; Busisiwe Sibiyi <busisiwe@kmnsinc.co.za>; Zukiswa Mbana <zukiswa@kmnsinc.co.za>

1 attachment (221 KB)

Letter to KMKS Inc - Zuma 11.12.2025.pdf;

Dear Sir/Madam,

Please find herewith, the letter in response to your letter of even date, for your attention.

Kind Regards,



Adv Mphothu Thokoa

Secretary

TRC CASES INQUIRY

+27 69 008 8888

TRC.secretary@trc-inquiry.org.za

www.trc-inquiry.org.za



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From: Lavelesani Ncube <lavelesani@kmnsinc.co.za>

Sent: Thursday, December 11, 2025 1:07 PM

To: Secretary <secretary@trc-inquiry.org.za>; mongezi <mongezi@ntanga.co.za>

Cc: thabo <thabo@kmnsinc.co.za>; busisiwe <busisiwe@kmnsinc.co.za>; zukiswa <zukiswa@kmnsinc.co.za>

Subject: RE: FORMER PRESIDENT J.G. ZUMA // YOUR RULE 3.3 NOTICE

Dear Adv Thokoa,

The above matter refers.

Kindly find attached letter for your attention.

Regards,

[Handwritten signature]
NPS



11 December 2025

Kwinana Mbana Nkome Sibiyi Inc
43 Wierda Road West
Wierda Valley
Sandton, 2196

Your Ref: Mr. Kwinana/Mr. Ncube

Dear Sir/Madam,

RE: FORMER PRESIDENT J.G. ZUMA// RECUSAL APPLICATION

1 Following the telephone conversation between the Evidence Leader, I Semanya SC and D Mpofu SC, we respond to your letter dated 11 December 2025, as follows:

1.1 Subject to the filing of an application for condonation, and such condonation being granted, regarding the non-compliance with the timelines provided for the recusal application; the following timelines are suggested for the further conduct of the recusal application.

1.2 Founding papers to be filed no later than 15 December 2025.

1.3 Answering affidavit to be filed no later than 22 December 2025.

J. G. Zuma
NPS



1.4 Replying affidavit, if any, to be filed no later than 8 January 2026.

1.5 Written submissions to be filed no later than 14 January 2026.

1.6 Oral argument to be made on 16 January 2026.

2 I hope this addresses the concerns raised in your letter.

3 Should any institution/parties be minded to support or oppose the recusal application, they are to do so in line with the timelines indicated herein.

Regards,

Khampepe J
Chairperson

ICJ
NPS

**IN 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**

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA

Applicant

and

JUSTICE SISI KHAMPEPE, THE CHAIRPERSON

OF THE COMMISSION

Respondent

FILING SHEET – REPLYING AFFIDAVIT

HEREBY PRESENTED FOR SERVICE AND FILING:-

1. Applicant's Replying Affidavit in respect of the Recusal Application.

DATED AND SIGNED AT SANDTON ON THIS 08TH DAY OF JANUARY 2026.



KMNS INC.

Attorneys for the Applicant

43 Wierda Road West

Wierda Valley

SANDTON, 2196

Tel: 011 462 5589

Emails: thabo@kmnsinc.co.za /

lavelesani@kmnsinc.co.za /

busisiwe@kmnsinc.co.za

Ref: Mr. Kwinana/Ms. Sibiya

**TO: THE SECRETARY OF THE COMMISSION
JOHANNESBURG
EMAIL: secretary@trc-inquiry.org.za**

**AND TO: ALL INTERESTED PARTIES
c/o THE SECRETARY OF THE COMMISSION
EMAIL: secretary@trc-inquiry.org.za**

**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**

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA

Applicant

and

**JUSTICE SISI KHAMPEPE, THE CHAIRPERSON
OF THE COMMISSION**

Respondent

REPLYING AFFIDAVIT OF FORMER PRESIDENT ZUMA

I, the undersigned

JACOB GEDLEYIHLEKISA ZUMA

do hereby make oath and say that

1. I am an adult male and the applicant in the present recusal application. My details remain as set out in my founding affidavit filed on 15 December 2025.
2. The facts stated herein, unless the context indicates otherwise, are within my own personal knowledge and are to the best of my belief both true and correct.
3. I have read the answering affidavit of Ishmael Semanya SC which purports to be that of the Commission. I respond thereto below. I am also aware of the application delivered by Former President Thabo Mbeki on behalf of himself and four other senior members of the Executive also calling for recusal of the Chairperson on largely overlapping grounds of perceived bias.

W.T.M. JAZ 1

4. Lastly I have also read the answering affidavits filed on behalf of the Calata Group. They do not take matters much further and they will be subsumed in what is stated below.

A: PRELIMINARY ISSUES

5. Before dealing with the merits of the application, it will be necessary firstly to deal with some preliminary issues which will be canvassed upfront.

A1: Incompetent and/or inadmissible answering affidavit

6. First, I strongly dispute the right, the title and/or authority of Adv Semenya SC to depose to the answering affidavit on behalf of the cited respondent, namely Justice Sisi Khampepe. I further deny that Adv Semenya SC has any unique direct and substantial interest in the application which is different to or higher than the other Evidence Leaders.
7. In any event there is simply no response from the cited respondent. The only claim made is that the answering affidavit is made "*on behalf of the Commission*". The Commission is not a party to the application and there is no non-joinder objection. Even if it was, there is also no confirmatory affidavit either from the Chairperson of the Commission or any other member thereof which gives any authority to the deponent. Several of the allegations made are clearly in the unique and personal knowledge of Justice Khampepe.
8. Furthermore, Adv Semenya SC is himself deeply and personally implicated in the key grounds for recusal raised in both the Zuma and the Mbeki recusal applications. In the circumstances he is ethically and professionally barred from giving legal advice on the very issues raised in the applications. That task ought

W.Z.M. JAZ

properly to have been assigned to another legal advisor who is not implicated or named in the alleged irregularities and who has no direct interest in the outcome of the application. At best Semenya SC is an accomplice to the actions of the main perpetrator.

9. It is indeed also an indisputable fact that regarding prior association with the NPA, Adv Semenya SC has been accused of a conflict of interest which is similar to the one attaching to Justice Khampepe. There is nothing in the office of Evidence Leader which entitles Adv Semenya SC to depose to the answering affidavit in the present circumstances and in respect of an issue which is extraneous to the core mandate of the Commission.
10. For all the above reasons, the answering affidavit is incompetently made and it must be disregarded as *pro non scripto*. I am advised that further legal argument will be advanced at the hearing in this regard.

A2: Intersections and overlaps in respect of the grounds for recusal

11. In the event that the Commission nevertheless rules that the answering affidavit must stand, than I respond thereto as set out below. In doing so I wish to highlight some contextual considerations.
12. Given the obfuscatory nature of the answering affidavit, I am advised that, during legal argument, the real issues will be carefully analysed and clearly unpacked.
13. The Commission will be implored to carefully consider all the 5 grounds of recusal raised by both Former Presidents Zuma and Mbeki, respectively both individually and cumulatively.

W.Z.M. JAZ / 3

14. In that regard it will be appreciated that, with the exception the ground based on President Zuma's detention without trial, there are significant overlaps in respect of the remaining 4 grounds of recusal which broadly cover the two topics of institutional bias and the handling of the Semenya recusal application. For the record, I embrace the common grounds raised in the Mbeki supporting application. This aspect will also be further elaborated upon during argument.
15. Further it must be noted that one major difference between my application and the Mbeki application is that the latter relies solely on reasonably apprehended bias while mine relies on both actual and/or reasonable apprehended bias. The actual bias charge is exclusively related to the actual and undisputed giving of advice to one party in the Semenya recusal dispute by the decision maker who is legally enjoined to be independent and impartial.

A3: Alleged unreasonable delay defence

16. Lastly, I need to deal with the issue of alleged unreasonable delay in raising the recusal applications which is also raised in the answering affidavit of the Calata group. The objection is a non-starter because, first, it is based on the failure to appreciate the interconnectedness between the grounds of recusal and the fact that the most recent improper conduct in respect of the Semenya recusal application constituted the last straw and trigger for the recusal application. In my case I can confirm that by the time I had an opportunity meaningfully to engage with the Rule 3.3 Notice, I was in a position to deal with all the grounds of recusal in one single transaction.

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17. It is clearly in the interests of justice that the grounds of appeal be considered both individually and cumulatively. Even if only one ground is upheld the application must succeed.
18. There is also no foundation for the assertion that I should have been aware of the appointment of the Commission in May 2025. No notice thereof was brought to my attention until the Rule 3.3 Notice was served. The correspondence between my attorneys and the Secretary of the Commission makes it abundantly clear that I had not had the opportunity to consult and engage with the issues raised in the Terms of Reference or the Rule 3.3 Notice for some time and for the reasons outlined therein. It is therefore false to assert that I ever "*acquiesced*" in the issues raised in the recusal application.
19. Nor is there any foundation for the gratuitous attribution of bad faith and turpitude to me and/or President Mbeki for stating the obvious fact that the egregious misconduct of the Chairperson unravels everything in this application. This *ad hominem* attacks on members of our respective legal teams is particularly distasteful and will not be reciprocated to avoid degeneration to unnecessary levels. Personally I doubt that my legal team is able to fully appreciate the level of injustice I suffered during my cruel and degrading detention without trial as ordered by Justice Khampepe.
20. In any event the very idea that an illegal and biased Commission may be allowed to continue to operate and waste taxpayers money, not to mention the understandable emotions and genuine concerns of the victims, on the technical basis of alleged unreasonable delay, needs only to be stated to be rejected. It

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is trite that delay cannot trump illegality. I am advised that, if necessary, legal argument will be advanced in this regard.

21. Bearing all of the above in mind and having disposed of all preliminary legal issues raised on both sides, I now proceed to deal *ad seriatim* with the averments made in the answering affidavit. Any allegations not specifically dealt with must be regarded as having been denied in so far as they are in conflict with my overall version expressed in this and the founding affidavit.

Ad paragraphs 1 - 4

22. Save for admitting the professional credentials and status of the deponent I deny these allegations. More specifically and as more fully indicated above, I deny the admissibility of the answering affidavit.

Ad paragraph 5

23. I specifically deny that the recusal application is spurious, vexatious, scurrilous and even malevolent for any reason including those listed at sub-paragraphs 5.1 to 5.15. More specifically and without much elaboration at this state, I am advised that it will be argued that:-

23.1. There is no legal or logical basis for imputing any actual or constructive knowledge to me about the establishment of the Commission or its terms of reference.

23.2. There is also no legal basis to invoke the doctrine of election or acquiescence, let alone "*peremption*", when it was made clear in the correspondence that, until recently, I had not yet had the opportunity

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meaningfully to engage with the Rule 3.3 Notice. The Commission did grant me the extensions I sought, either expressly or tacitly by conduct.

23.3. Putting aside the red herring denial of “*secrecy*”, which is neither here nor there, there is no viable denial of the gravamen of the pointed allegation that the Chairperson gave specific advice to Adv Semenya SC and more pertinently advised him on what to convey to Adv Vas Soni SC so as to succeed in the Semenya recusal application. I am advised that it will be argued that legally and by application of common sense logic, the failure to deny such a serious allegation is tantamount to an admission. Any further confirmatory evidence contained in this affidavit is therefore provide *ex abundanti cautela* and for the sake of completion.

23.4. It is settled law that a real genuine and *bona fide* dispute can only exist where the court or tribunal is satisfied that the party raising the dispute has in its affidavit seriously and unambiguously addressed the fact said to be disputed. Such a party is not permitted to “*envelope (its) case in a fog which hides or distorts the reality*”. That is exactly the case here.

23.5. The decision not to provide some of the evidence pertaining to that allegation was not “*without cause*” but based on the pleaded imperative to protect, *inter alia*, ongoing sensitive investigations and the like. Such evidence will be made available to the Judicial Services Commission or even this Commission once specific safeguards have been negotiated.

23.6. For now it is sufficient to reiterate that I maintain that the Chairperson indeed gave the alleged advice in writing and it will become available once the necessary discovery processes have been followed in the

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appropriate forums. To be more specific on 5 November 2025, the Chairperson personally wrote to Adv Semenya SC advising him of research which would be helpful to his case and proposed that he should share with Vas Soni SC who was representing him in the Semenya recusal application which was scheduled to be argued before the very same Chairperson. This correspondence was notably not sent from the official Commission email but from the Chairperson's private email address. On another occasion the Chairperson specifically advised Adv Semenya to watch out for and/or deal with paragraph 45 of the founding affidavit in the Semenya recusal application which alleges that Semenya SC had violated a directive of the Commission. Again if all of the above is denied, I invite the Commission and/or the respondent in the interests of transparency and openness to disclose to the public all the email and WhatsApp correspondence exchanged in the relevant period between the two individuals.

23.7. The general rule against making a case in reply is not without exceptions. A court always retains the discretion to allow new matter in reply. There is no need to do so if, as in the present case, the material is common cause. Furthermore the Commission is a *sui generis* process not bound by the Uniform Rules of Court.

23.8. For the avoidance of any doubt and to avoid diversionary tactics, it is readily conceded that, by definition, Evidence Leaders and Commissioners speak frequently and even privately about matters concerning the subject matter of the investigations. However and to the full knowledge of the deponent and the respondent, that is not the issue.

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The issue is the content of the specific and improper communication spelt out in the affidavit and the undisclosed and undisputed giving of any advice exclusively to one party in the Semenya recusal application. The inherent bias and/or misconduct in doing so, speaks for itself.

23.9. The relief for "*partial*" recusal obviously only applies to my uniquely personal complaint regarding my detention without trial. Otherwise the main prayer for total recusal applies if any other ground is upheld.

23.10. It is common cause that the impugned judgments were penned or authored by the respondent. Whether or not the other six justices who concurred with her were also motivated by malice or animosity, which is possible, has no direct relevance to the present application which is specifically directed at the Chairperson.

23.11. It is correctly not disputed that millions of South Africans including me, honestly share the view that the order for my imprisonment was malicious, vindictive and vengeful. The so-called July unrest is testament to that, tragically so. That being the case it cannot be contested that to hold that view, whether rightly or wrongly, is reasonable. That is the only requirement for recusal.

23.12. Notably it is also not disputed that, in aggravation, Judge Khampepe also conducted public interviews in which she irregularly commented on her unprecedented decision to send me to jail without the benefit of a trial. This must surely go to the reasonableness of my apprehension of bias on her part.

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Ad paragraphs 6 - 24

24. I deny these allegations.

25. In amplification and at the risk of repetition, I reiterate that:-

25.1. I take no issue whatsoever with the purpose of establishing the Commission, its terms of reference and the general need for communications between Evidence Leaders and Commissioners.

25.2. While the proceedings of the Commission are inquisitorial, the recusal applications are clearly adversarial. In any event the rules of natural justice and especially the rule against bias, apply with equal force in inquisitorial proceedings, more particularly where adverse findings and/or recommendations are likely to be made. This is trite.

25.3. In the context of the Semenza recusal application it was improper to give and accept advice without the knowledge or involvement of the opposing parties. That is a clear and indisputable exhibition of actual bias.

25.4. A clear distinction must be made between the routine communications which pertain to the investigatory work of the Commission as set out in its terms of reference and other *sui generis* interlocutory proceedings instituted by outside parties in which the Commission is cited as a party.

25.5. I agree that the process followed by the Commission must, at all material times and in all respect, be fair. By definition, this includes absence of bias and the adage that: Justice must not only be done, it must be seen to be done.

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Ad paragraphs 25 – 28 (the First Complaint – the Chairperson's Role in the Constitutional Court Judgments)

26. In respect of this ground it is instructive to note upfront that it is not disputed that millions of South Africans "*continue genuinely to believe that the judgment was driven by undue vengeance, bitterness and highly personalised animosity*" on the part of its author, the respondent. I am included in that genuine belief.
27. That being the case it does not lie in the mouth of the deponent to deny the reasonableness of the apprehension of bias, on any standard. The admitted facts raised a presumption of bias. This seems to be common cause.
28. The general proposition of law which constitute the only defences asserted in the answering affidavit have no bearing on the pleaded ground of recusal. The presumption of bias stands because there is no valid rebuttal thereof.
29. It also seems completely lost to the deponent that the Chairperson is not currently acting as a judicial officer in the Commission but as a functionary in the office of the President. She is therefore susceptible to the ordinary applicable constitutional standard of impartiality and ethical conduct which binds all organs of state such as the Commission. I am advised that further legal argument will be advanced.

Ad paragraphs 29 – 30 (The Second Complaint – The Chairperson's Former Roles as Deputy NDPP and TRC Amnesty Committee member)

30. In addition to what is stated in my founding affidavit and augmented in the Mbeki application, which I support, I highlight that the only intelligible defence offered in respect of this ground of recusal is that the terms of reference restrict the

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enquiry to events which happened after 2003 when the Chairperson was no longer a member of the Amnesty Committee and/or the NPA.

31. With the greatest respect this "*defence*" is feeble and misses the entire point of the pleaded objections of institutional bias based on the inherently conflicting roles. To illustrate this point it will be demonstrated that the Chairperson is notionally a potential witness and/or participant in the decisions which are to be investigated. This pertains to the entire lifespan of the TRC and beyond up until the present. She is virtually in the same position as Judge Vincent Saldanha and other witnesses who previously held relevant offices in the TRC.
32. I am advised that it will also be argued that in determining the reasonable apprehension of bias point, it is not necessary to perform the surgical splitting of hairs performed by the Calata group between the clearly interwoven broader issues and the narrow question set out in the terms of reference. A robust and common sense approach must be adopted. The test is objective.
33. Notably the person in whose personal and peculiar knowledge lies the extent of her involvement or non-involvement in certain decisions, has chosen silence. There is therefore no valid defence to this ground of recusal. Even the Calata group has itself correctly rejected the rigid application of the artificial 2003 cut off date.
34. To the extent that the President acted irrationally in appointing Judge Khampepe despite her obvious disqualification for the office, that is a matter to be dealt with in a different forum. For now I only impugn her acceptance of the appointment while fully aware of the facts as well as her subsequent improper conduct, to which I now turn.

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Ad paragraphs 31 – 34 (Third Complaint – The private and secret advice given to Adv Semenya SC)

35. In respect of this ground it is also notable that Adv Semenya SC who is the recipient of the alleged improper advice, nowhere denies being given such advice by the Chairperson. This ought to be the end of the matter. It matters not whether such advice was given secretly or publicly.
36. The startling proposition made that it is not necessary for (Adv Semenya SC or the Chairperson) to deal in detail with the specific allegations made, in spite of their nature and seriousness, only needs to be stated to be rejected. Nor can such allegations be properly rebutted via a bare denial.
37. To make matters worse, in the course of preparing this affidavit and on 6 January 2026, I observed a television interview on the Newzroom Afrika Channel and heard the Official Spokesperson of the Commission, Mr Lionel Adendorf while being questioned by the host, Mr Xoli Mngambi on whether the Chairperson was perturbed by the allegations, replying as follows:

"She is an amazing person. I spoke to her earlier and I just want to make reference to where she advised the Chief Evidence Leader on a matter. She does that to me often. She does that in the normal course of our work where we talk regularly about things and there is nothing wrong with that. She is not concerned about it as well ... She is not concerned at all." (My emphasis)

38. From the above, it is clearer that:-

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- 38.1. the above official position of the Commission was discussed directly with the Chairperson;
- 38.2. the giving of advice to Adv Semanya SC is admitted in the form of a so-called confession and avoidance;
- 38.3. a justification is offered, whose validity has been disputed as it does not hold water. This is a matter for argument.
39. The Adendorf interview is available on the link:
<https://youtu.be/5GeFjTK56k0?si=Ns4Hyxprgq7FvoKd>.
40. Whichever way one looks at it the giving of advice as pleaded, is admitted. The only remaining issue is the impropriety thereof. Further argument will be advanced in this regard.

Ad paragraphs 35 - 36

41. I admit these allegations and the Chairperson's credentials.

Ad paragraph 37

42. I admit the general rules and the test applicable to recusal applications. However I strongly deny that the so-called double-reasonableness test applies in the present proceedings and context. Neither does the presumption of impartiality.
43. In any event and even if these tests applied, which is denied, on the undisputed facts of this case, they have been exceedingly met.
44. I agree that these are matters for legal argument.

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Ad paragraph 38

45. I admit that the Semenya recusal application was based on his alleged conflict for having previously acted on behalf of the NDPP. This conflict is very similar to the one pleaded by me and in the Mbeki application. As already stated, this alone disqualifies Semenya SC from advising the Commission, let alone his involvement in the improper exchange of tips and advices with the Chairperson.
46. I express no definitive view on the merits of the Semenya recusal application which decision may or may not be taken on review by the participating parties. The present application is solely based on bias, not rationality or any other grounds of judicial review.

Ad paragraph 39

47. I deny that no details are set out. Sufficient details have been pleaded to necessitate a detailed response and the shifting of the onus to assert a proper justification, which the respondent has failed to do. To the extent that some of the evidence has been withheld at this stage and for valid reasons, this has no bearing on the duty to explain.
48. There is no need to make a case in reply when the clear and pointed allegations made in the founding affidavit have not been disputed. It is false that the deponent would be "*unable*" to respond if indeed the allegations were not true.
49. In the unlikely event that it is found that there is a need to substantiate undisputed evidence and purely to explain why Adv Semenya SC is understandably cagey on the issue of the advice given by the Commissioner to

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him, I will cross-refer to what is already stated above to substantiate my accusations of impropriety and actual bias.

Ad paragraphs 40 - 46

50. The bare denials contained in these paragraphs do not take the matter any further in the present circumstances.
51. Given the correct non-opposition thereof by the Commission, condonation for the late filing of the application ought properly to be granted.

WHEREFORE, I persist in seeking the relief set out in the Notice of Application.



DEPONENT

Sworn to and signed before me in NEANOLA on this the 07 day of **JANUARY 2026**, the deponent having acknowledged in my presence that he knows and understands the contents of this affidavit, which he regards as binding on his conscience and has no objection to taking the prescribed oath, the Regulations contained in the Government Notice No. R1258 of 21 July 1972, as amended, and the Government Notice No. R1648 of 19 August 1977, R1428 of 11 July 1980 and R774 of 23 April 1992 having been duly complied with.

I CERTIFY THAT THIS DOCUMENT IS A TRUE REPRODUCTION (COPY) OF THE ORIGINAL DOCUMENT WHICH WAS FORWARDED TO ME FOR AUTHENTICATION. I FURTHER CERTIFY THAT FROM MY OBSERVATIONS, AN AMENDMENT OR CHANGE WAS NOT MADE TO THE ORIGINAL DOCUMENT.	
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