IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS AND/OR PROSECUTIONS

In the matter of the application by Thabo Mvuyelwa Mbeki for the recusal of the Chairperson, Judge Sisi Khampepe

---

ANSWERING AFFIDAVIT OF ASMITA THAKOR
ON BEHALF OF THE CALATA GROUP

I, the undersigned

ASMITA THAKOR

state under oath as follows:

1. I am an adult female and a partner at Webber Wentzel attorneys, where I serve in the Pro Bono department.

2. I am the instructing attorney for 25 families and the Foundation for Human Rights, known as the "Calata Group".

3. I am instructed by my clients to oppose the application brought by former President Thabo Mbeki (**"Mbeki"** or **"the applicant"**) and other former members of the Executive for the recusal of Judge Sisi Khampepe (**"the Chairperson"**) (**"the application"**).

INTRODUCTION

4. The application was brought way out of time. It is gratuitous and opportunistic; and it is a transparent attempt to derail or delay this Commission's proceedings.

5. It was filed late on Friday 19 December 2025 and circulated to the parties at 7 pm on Sunday night, 21 December 2025.

6. The application masquerades as a response to the recusal application brought by former President Jacob Zuma (**"Zuma"**) (**"the Zuma application"**) in claimed compliance with the Commission's directive of 11 December 2025.

7. It is in fact a fresh standalone application. It makes only 2 passing references to the Zuma application and only in the context of the Commission's directions in respect of that application.

8. If it was Mbeki's intention to merely support the Zuma application he could have filed an answering affidavit expressing and explaining his support with the relief sought, rather than filing a fresh application.

9. No attempt was made to seek directions on the filing of answering and replying affidavits.

10. I rely on the general background set out in Lukhanyo Calata's answering affidavit to the Zuma application and will not repeat that here.

11. I do not intend to respond to every allegation made by Mbeki in his founding affidavit. To the extent any specific averments are not dealt with herein they are denied.

12. I have read the answering affidavit of Ismael Semenya SC which responds in detail *ad seriatim*. The Calata Group is in essential agreement with those answers.

AT

CONDONATION

13. As provided in the paragraphs above, the application was only circulated to the parties on the evening of 21 December 2025. It is telling that no adequate reasons were provided for the late filing.

14. As the application is a new, stand-alone application, the Calata Group sought clarification on the timelines which were not adhered to, and specifically, if new timelines were going to be issued. On 24 December 2025, the Commission replied to the Calata Group's queries indicating that any filing of documents outside the timelines given in the directives must be accompanied by a condonation application.

15. For clarification purpose, the Commission issued directives for the timeline of the recusal application on 3 December 2025, as well as amended directives of 11 December 2025, the latter of which provided an indulgence to Zuma to provide for more time for him to file his papers. In terms of the amended directives, any parties wishing to oppose or support the recusal application should file papers as follows:

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

15.2 Answering affidavits to be filed no later than 22 December 2025.

15.3 Replying affidavits, if any, to be filed no later than 8 January 2026.

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

15.5 Oral argument to be made on 16 January 2026.

AT

16. Since the application was filed well out of time, it stands to reason that any answering affidavits will also be filed out of time. This was unavoidable.

17. According to the amended directives, the Calata Group needed to file their answering affidavit to the application by 22 December 2025. It would have been impossible to file by 22 December 2025, as the application was only received on the evening of 21 December 2025.

18. Further, the Mbeki application contains several factual inaccuracies which the Calata Group's legal team required a reasonable period of time to verify against other court papers, meeting minutes and official documents.

19. The verification process, compounded with the festive period and public holidays, caused a further delay. This affidavit is, accordingly 7 days late of the prescribed period in the amended directive, but still well within the time periods prescribed for the filing of affidavits in the Uniform Rules of Court.

20. Given that replying affidavits need to be filed by 8 January 2026, the late filing of this affidavit will not prejudice the applicants as they will still have time to consider it in time for the filing of their affidavits.

21. The issues raised by the Calata Group are factually substantive. We have raised cogent and substantive issues to show that the recusal application is brought entirely without merit.

22. As such, the Calata Group kindly requests the condonation is granted.

AT

5

UNREASONABLE AND UNDUE DELAY

23. The Calata Group has called for the dismissal of the Zuma application because, *inter alia*, it was not brought promptly or within a reasonable period. The lateness of the Mbeki application is even more egregious.

24. On 31 March 2025, Mbeki applied to intervene in the High Court application brought by the Calata Group in January 2025 which, amongst other relief, sought the establishment of a commission of inquiry into the suppression of the TRC cases.

25. Given his intervention in the aforesaid matter, Mbeki has been fully aware of the nature of his alleged connection to the subject matter of this inquiry since the first quarter of 2025. In addition, the Commission issued him with a detailed Rule 3.3 Notice on or about 19 September 2025.

26. Mbeki has been aware of the appointment of Judge Khampepe as the Chairperson of the Commission since the presidential proclamation was issued on 29 May 2025 establishing the Commission. This was widely reported in the media. He has known this fact for a period of more than 7 months.

27. Mbeki has enjoyed comprehensive knowledge of Judge Khampepe's background for over 25 years. He was the President that appointed her to the bench and asked her to lead two high-profile inquiries.

27.1 On 31 October 2000, then President Thabo Mbeki announced that he was appointing Khampepe as a judge of the then Transvaal Provincial Division of the High Court.

AT
TM

6

27.2 In 2002, Mbeki appointed Judge Khampepe and Judge Dikgang Moseneke to lead a judicial observer mission to the Zimbabwean presidential election.

27.3 In March 2005, Mbeki appointed Judge Khampepe to lead a commission of inquiry into the future of the Directorate of Special Operations (**"DSO"**), also known as the Scorpions.

27.4 On 19 November 2007, Mbeki appointed Judge Khampepe as a judge of the Labour Appeal Court of South Africa.

28. Moreover, Judge Khampepe's bio and CV have been available for several years on the websites of the Constitutional Court, South African Judiciary, Wikipedia, and the University of Pretoria. Her CV has also been on the Commission's website since July 2025.

29. It is not open to Mbeki and his legal team to claim that news of the positions Judge Khampepe held previously at the TRC and the National Prosecuting Authority (**"NPA"**) suddenly reached them in mid-December 2025.

30. It is settled law that legal applications, and recusal applications in particular, must be made as soon as an applicant becomes aware of the circumstances that warrant such an application.

31. Notwithstanding this well-known requirement, Mbeki waited some 204 days before raising his objections against the Chairperson. No attempt was made in his application to explain why he waited nearly 30 weeks before taking action.

32. Mbeki merely claims that he had to wait for his lawyers to first consider the Zuma application which was filed on 15 December 2025 before he could act. This does

AT

not explain why he did not act earlier.

33. Indeed, Mbeki and the former members of the executive were happy for the Commission's hearings originally scheduled for 10 November 2025 to proceed without first seeking the recusal of the Chairperson.

34. Even when the Calata Group attorneys wrote to all the parties on 11 November 2025 drawing their attention to Judge Khampepe's background, Mbeki and his legal team chose not to act. That letter (annexed to the application as **"TMM5.1"**) stated:

> "What is set out above is a matter of public record, and to date no party has raised any objections. If any parties have objections, they need to raise them now and pursue any action they wish to take immediately, rather than disrupting proceedings at a later stage."

35. There was a duty on Mbeki to speak up. He was not permitted to stand by and bide his time. There was a duty on him to bring his objections to the attention of the Commission promptly and without delay.

36. Pursuing a recusal at a later stage, despite a much earlier opportunity to do so, implicates the interests of justice. In addition, the interests of justice demand that the interests of other parties and the wider public be considered. In particular, recusal proceedings can derail or substantially delay the work of the Commission, which would be deeply prejudicial to the interests of the Calata Group and the public in general.

37. It is not in the interests of justice to permit an applicant who has knowledge of the central facts upon which recusal is sought, to wait more than 200 days before

AT TM

acting. What Mbeki alleges in his application about the Chairperson's past he knew 7 months ago. He cannot now be heard to complain that this same background suddenly gives rise to a danger of bias.

38. Mbeki will no doubt claim that his second ground, namely the Chairperson's handling of complaints against the Chief Evidence Leader, Adv Semenya SC's, was more recent and was the tipping point.

39. This would be a fanciful claim. If pursued, the claim suggests that but for this development, Mbeki would not have sought a recusal based on the former positions held by the Chairperson at the TRC and NPA. This would seriously undermine the first ground of recusal.

40. In fact, the second ground of recusal, which does not provide the slightest basis for recusal, is nothing more than an add-on which was likely included to provide Mbeki with an excuse why he did not act timeously.

41. In waiting until the end of the year to take action, Mbeki's application threatens to disrupt or derail the operations of this Commission. This was likely a calculated move. Accordingly, his application amounts to an abuse of the Commission process. The Commission has a duty to the parties and the public to ensure that such abuse is prevented.

42. Granting such a belated application would be unfair to the other parties and it would undermine the fair administration of the Commission's mandate in the public interest. It would bring the administration of the Commission into disrepute.

43. In short, Mbeki's application for the recusal of the Chairperson was not made promptly or within a reasonable time. The delay was inordinate, inexcusable and

AT AM

unexplained. It should be dismissed on this ground alone.

44. In any event, Mbeki's conduct is manifestly inconsistent with a reasonable apprehension of bias, which will be dealt with below. His tardy conduct raises questions around the various claims he makes, which in our view, cannot be taken seriously.

GROUND ONE – PRIOR ROLES

Role as a TRC Commissioner

45. This ground of recusal is riddled with errors.

46. Mbeki alleges at paragraphs 17 and 22 of his affidavit that Judge Khampepe presided over or participated in the amnesty proceedings in the Cradock Four matter "*involving Mr Calata's father*". She did not.

46.1 I annex hereto marked **"A"** the first and last page of the amnesty decision in AC/99/0350 which reflects that she was not a member of that four-person panel.

46.2 Even if she did participate in that panel, it would not provide a basis for recusal. Mbeki does not explain why her participation in that amnesty panel would give rise to a reasonable apprehension of bias.

46.3 Mbeki presumably alleges this in order to create an impression of some focus by Judge Khampepe on the Cradock Four, whose family members

AT

have played a leading role in exposing political interference in the TRC cases.

46.4 Mbeki and his legal team did not even bother to check the amnesty records before alleging that Judge Khampepe had participated in the amnesty determination "*directly concerning the Calata family*".

46.5 In passing, I note that Mbeki alleges that all the applicants were denied amnesty and only Eugene de Kock was granted amnesty. This is incorrect. There were 8 applicants in total and Jaap van Jaarsveld (AC/2001/176) was also granted amnesty for his role in scoping how to kill Mathew Goniwe.

47. Mbeki notes that as a TRC Commissioner, Judge Khampepe, was party to a finding made in volume 5 of the TRC Report that the ANC had committed gross human rights violations during the armed struggle.

48. Mbeki omitted to mention that in the same volume she was also party to the primary finding of the TRC, which was made against the former apartheid state:

> *"PRIMARY FINDING*
>
> 77 On the basis of the evidence available to it, the primary finding of the Commission is that:
>
> THE PREDOMINANT PORTION OF GROSS VIOLATIONS OF HUMAN RIGHTS WAS COMMITTED BY THE FORMER STATE THROUGH ITS SECURITY AND LAW-ENFORCEMENT AGENCIES.
>
> MOREOVER, THE SOUTH AFRICAN STATE IN THE PERIOD FROM THE LATE 1970S TO EARLY 1990S BECAME INVOLVED IN ACTIVITIES OF A CRIMINAL NATURE WHEN, AMONGST OTHER THINGS, IT KNOWINGLY PLANNED, UNDERTOOK, CONDONED AND COVERED UP THE COMMISSION OF UNLAWFUL ACTS, INCLUDING THE EXTRA-JUDICIAL KILLINGS OF POLITICAL OPPONENTS AND OTHERS, INSIDE AND OUTSIDE SOUTH AFRICA.
>
> IN PURSUIT OF THESE UNLAWFUL ACTIVITIES, THE STATE ACTED

AJ AM

IN COLLUSION WITH CERTAIN OTHER POLITICAL GROUPINGS, MOST NOTABLY THE INKATHA FREEDOM PARTY (IFP)."

49. A copy of page 212 of Vol 5, Ch 6 of the TRC report is annexed hereto marked **"B"**. In the pages following, the TRC, including Judge Khampepe, found that the State Security Council, state and homeland security forces and PW Botha were responsible for orchestrating a host of gross human rights violations, including extra judicial killings.

50. In volume 3 of its report, the TRC concluded that the South African Police ("**SAP**") was "*the dominant and consistent perpetrator group*" in respect of torture and severe ill treatment. The TRC also found in volume 3 that:

50.1 at least three times as many victims of severe ill treatment belonged to the ANC/ UDF compared with the IFP and other political groups;

50.2 victims of acts of torture were predominantly ANC/UDF members and supporters;

50.3 ANC supporters were the overwhelming majority of victims of associated violations in all review periods (Vol 3, Ch 3, p 158, paras 14 – 15).

51. Mbeki opted not to refer to these findings. He also declined to refer to the finding of the TRC that the Inkatha Freedom Party (**"IFP"**) was:

51.1 "the primary non-state perpetrator of gross human rights abuse in South Africa from the latter 1980s through to 1994";

51.2 "that in 1987–88 the IFP exceeded even the SAP in terms of numbers of people killed by a single perpetrator organisation"; and

AT JM

12

51.3 the "IFP remains the major perpetrator of killings on a national scale" (paras 117-9, p 232, Vol 5, Ch 6 of the TRC Report).

52. The TRC also made findings against right wing opposition groups, the Pan Africanist Congress and the United Democratic Front.

53. Mbeki chose only to highlight the findings made by the TRC against the ANC. He did so to raise the insinuation that the Chairperson would be predisposed or somehow biased against the ANC.

54. It is apparent that Mbeki did not refer to the findings against other groups as this would tend to confirm to the reasonable observer that Judge Khampepe and the other TRC commissioners were in fact independent, objective and neutral; and not predisposed for or against any group.

55. Mbeki then engages in a remarkable leap of logic at paragraph 20 of his affidavit. He claimed that:

> "Given that Justice Khampepe was directly involved in making the TRC findings and recommendations (**regarding prosecutions of those who were declined amnesty**), the reasonable observer would apprehend that she may be **predisposed in favour of justifying or defending prior institutional conclusions** in which she played a key decision-making role." (Bold added).

56. Mbeki appears to be suggesting that simply because the TRC recommended prosecutions against those who were denied amnesty or who refused to apply for amnesty, a commissioner who signed off on such a recommendation would appear to a 'reasonable observer' to be predisposed "*to defending prior institutional conclusions*".

AT AM

13

57. Presumably, the '*institutional conclusion*' is the TRC's recommendation to prosecute offenders responsible for gross human rights violations, such as murder and kidnapping, who were not amnestied. Such a recommendation scarcely need have been made. The prosecution of such crimes is a function of the rule of law and is required under South Africa's new constitutional order.

58. Effectively Mbeki is suggesting that anyone who has indicated that apartheid-era crimes ought to be prosecuted should be precluded from being a commissioner in this inquiry, since he or she will be predisposed in favour of prosecutions and therefore will be seen to be biased. It is, with respect, a ridiculous suggestion.

59. The question of whether apartheid-era crimes should be prosecuted is not a question before this Commission. Accordingly, that recommendation does not have to be defended or justified. The central question before this Commission is whether political interference blocked the TRC cases from proceeding.

60. The questions before this Commission are narrow and defined factual questions that are capable of determination with rigorous inquiry. There is absolutely no need to interrogate specific recommendations of the TRC or to consider the philosophical or academic question of whether crimes of the past should be pursued or not.

61. Finally, Mbeki makes the extraordinary claim that because of Judge Khampepe's prior role in the TRC an apprehension of bias arises from "*the unavoidable overlap*" between her "*past adjudicative role and her present fact-finding responsibilities*".

62. The claim that the mere fact that Judge Khampepe served on TRC and its

AT AM

Amnesty Committee gives rise to reasonable apprehension of bias is a spurious one. It is settled law that mere overlap between cases or judgments is not a ground for recusal.

63. In any event, it is barely worth mentioning that the question of political interference did not, and could not, have featured during the operational period of the TRC. The simple fact of the matter is that Judge Khampepe has not previously investigated or adjudicated this narrow question.

64. Accordingly, in respect of this ground, Mbeki has failed to demonstrate that there can be any reasonable apprehension that the Chairperson would fail to bring an impartial mind to bear on the consideration of this matter.

Role in the NPA

65. Mbeki also claims that Judge Khampepe's short stint at the NPA between September 1998 and December 1999 makes her unsuited for her current role, since to a reasonable observer she may have an institutional interest in validating her decisions while at the prosecuting authority.

66. Mbeki alleges that Judge Khampepe had the "*institutional responsibility for shaping NPA policy on the TRC cases*". This is speculation. We are not aware of any specific policy on the TRC cases emerging from the NPA or the Human Rights Investigation Unit (**"HRIU"**) during 1998 or 1999.

67. Indeed, at that time, in respect of the TRC cases, the NPA appeared to be simply focussed on gearing up for the investigation and prosecution of those cases. This is evident from:

AT

67.1 Paragraphs 9 to 15 of the affidavit of former Priority Crimes Litigation Unit (**"PCLU"**) head Adv Anton Ackermann SC (annexed as F8 to the founding affidavit of Lukhanyo Calata, posted on the Commission website under the Calata Group submissions at Bundle 1).

67.2 Paragraphs 7 to 13, and the annexes of the affidavit of former deputy head of the PCLU, Adv Chris Macadam (annexed as F5 to the aforesaid founding).

67.3 Paragraphs 95 to 110 of the Calata founding affidavit (**"FA"**) in Bundle 1 which provides an overview of post TRC developments between 1998 and 2003.

68. Active interventions to block or retard investigations and prosecutions of the TRC cases only commenced around mid-2003, more than 3 years after Judge Khampepe had left the NPA, when both the DSO and the SAPS refused to investigate the TRC cases. (In this regard see from para 124 of the Calata FA and in particular paras 129 – 147).

69. The only policy or strategy to address the TRC cases, that we are aware of, emerged in the secret reports of the Amnesty Task Team (**"ATT"**) during 2004 (see paras 148 – 172 of the Calata FA), which resulted in, amongst other steps, the amendments to the Prosecution Policy.

70. By the time the ATT began its deliberations, Judge Khampepe had already been a High Court judge for nearly 3 and a half years.

71. Since Judge Khampepe had left the NPA more than 3 years before steps were taken to close down the TRC cases, there is nothing for her to clarify or defend

AT

16

and no need for her to be a witness before these proceedings.

72. To the extent that the role of the HRIU needs to be explained or clarified, this can be done by the former head of that unit, Judge Vincent Saldanah, who is already on the Commission's witness list.

73. Mbeki alleges at paragraph 28 of his affidavit that "*this Commission is mandated to investigate whether, during that very period*" steps were taken to block TRC-related prosecutions. The period in question being between 1995 and 2001. This is obviously incorrect. There is no allegation or any evidence suggesting that such steps were taken before mid-2003.

74. In this regard, we note that meetings between former police and army generals and representatives of the ANC government apparently took place between 1998 and 2004, allegedly to discuss what could be done to address or avoid future prosecutions of the TRC cases. (In this regard, see paras 375 – 395 of the Calata FA). While such interactions took place, we are not aware of any actual steps taken to block the TRC cases until 2003, as mentioned above.

75. We do however agree with Mbeki that the Commission's temporal inquiry mandate should not have commenced in 2003.

75.1 Given the said discussions began at least by 1998 the Commission must interrogate these interactions. It would be irrational not to do so.

75.2 Indeed, we had pointed this out to the President's legal team and urged them to advise the President not to delineate a starting date of the alleged interference, but to rather leave it to the Commission to investigate. This advice was ignored.

AT

75.3 We will urge the Commission to closely probe the interactions mentioned above, as regardless of the starting date mentioned in the Terms of Reference, the Commission is obliged to investigate the genesis of the interference that commenced in 2003.

76. The claim that Judge Khampepe has an "*institutional interest ... in validating the propriety of decisions made during her tenure*" is a wholly illogical assertion. None of the decisions taken by Judge Khampepe, or to which she was party, had anything to do with the interference in the TRC cases, which had not commenced during her tenure at the TRC and NPA.

76.1 As mentioned above, the rule of law requires that serious apartheid-era crimes that were not amnestied such as murder, kidnapping and torture (most amounting to crimes against humanity) be investigated; and where *prima facie* cases exist, such crimes ought to be prosecuted.

76.2 This was recommended by the TRC, and until mid-2003 the NPA was working towards this objective unhindered.

76.3 According to Mbeki, anybody involved in such a recommendation may not be involved in adjudicating the question as to whether any interference blocked the TRC cases, as it would give rise to a reasonable apprehension of bias. This does not follow.

76.4 As mentioned above, this Commission is not required to consider whether the TRC cases ought to have been prosecuted or not. It is only authorised to investigate whether steps were taken to stop or undermine the cases

AT

18

from being pursued.

77. Past overlap or association with subject matter is not in itself a ground of recusal. More is needed before the test for recusal will be satisfied.

78. Mbeki has failed to demonstrate that Judge Khampepe's prior work at the TRC and NPA means that she will be unable to apply her mind in an impartial manner to the narrow question before this Commission.

GROUND TWO – THE SEMENYA OBJECTIONS

79. Mbeki's second ground is particularly flimsy and specious. It appears to be tagged on to ground one in an attempt to embellish that ground and explain why the recusal application was brought 7 months late. It is a futile endeavour.

80. In the first place it is noted that Mbeki chose not to seek the recusal of Chief Evidence Leader Ismael Semenya SC (**"Semenya"**). He now seeks to make use some of those grounds to support his charge that the Chairperson should step down.

Objection to the Calata Group leading their witnesses

81. In setting the scene for this ground, as set out in paragraph 35 and subparagraphs of his affidavit, it is entirely unsurprising that Mbeki attempts to mislead the Commission as to the facts behind the request of the Calata Group to lead its own witnesses.

81.1 As has been set out in the Calata Group submissions on this question, the communications between our lead counsel Adv Howard Varney (**"Varney"**)

AT

and Semenya were no more secret or private than all the other communications between the various parties and the Commission.

81.2 The claim that the original decision was not taken by the Chairperson in terms of Rule 3.3 was never confirmed or denied by the Commission itself.

81.3 The claim that the decision was kept secret is a fiction. If it was secret the Commission would not have posted the correspondence on SharePoint (regardless of who had access at that time).

81.4 Another fabrication is the claim that the decision was disclosed "*following probing by the other parties*" on 27 October 2025. In fact, it was mentioned by Varney at the very start of the meeting when he was the first legal representative asked by evidence leaders to introduce himself and set out his expectations for the first hearing.

81.5 The claim that "*prescribed procedure*" in terms of the "*Regulations and Rules*" require a request to lead witnesses to be done only by way of "*formal application*" is nothing more than an invention of Mbeki's legal team. Rule 3.1 does not prescribe a procedure.

82. Mbeki raises the claimed conflict of interest against Semenya pursued by the NPA and the Minister of Justice, namely that he had previously represented those parties in the constitutional challenge to the Prosecution Policy amendments (in paras 35.4 to 39).

82.1 Yet Mbeki himself pursued no application to recuse Semenya, nor did he file any papers in support of the recusal application.

82.2 It can be inferred that he did not regard the alleged conflict serious enough to warrant such action. Yet he now elevates the same issues to embellish his recusal application of the Chairperson.

83. Mbeki complains strenuously in paragraphs 40 – 46 of his affidavit that Judge Khampepe failed to interrogate the objections raised to the Calata Group leading their witnesses.

84. It is again unsurprising that Mbeki's affidavit makes no mention of the proceedings held at the Commission on 28 November 2025 to deal with this issue. This was not an accidental omission.

85. At this hearing all the parties, including Mbeki's legal team, agreed to resolve the dispute by agreeing on a process for the Commission to deal with the current objections, as well as an informal procedure to deal with future requests in terms of Rule 3.1.

86. The Mbeki legal team helped with the drafting and editing of the consent ruling that was presented to the Commission. After consideration in chambers, the Commissioners in open hearing approved the draft ruling without alteration and issued the following ruling, which is quoted below in full:

> "After having heard the parties, the Commission makes the following ruling:
>
> 1. In respect of requests by parties to lead witnesses, the Chairperson of the Commission will make such decisions in terms rule 3.1 of the Commission's Rules.
> 2. There is currently a request by the Calata Group to lead the following witness:
>
> 2.1. Lukhanyo Calata
> 2.2. Thembi Simelane

2.3. Yasmin Sooka

2.4. Dumisa Ntsebeza SC

2.5. Ole Bubenzer

2.6. Michael Schmidt

2.7. Anton Ackermann SC

2.8. Adv Vusi Pikoli

3. The reasons for the Calata Group's request to lead these witnesses are set out in their submissions, dated 7 November 2025.

4. The substantive objections of other parties to the Calata Group leading the aforesaid eight witnesses are set out in their written submissions.

5. In respect of future requests by the parties to lead witnesses, such requests will be made by way of letter addressed to the Chairperson, copied to all parties, identifying the witnesses in question and providing the reasons why the parties wish to lead those witnesses.

6. Any party wishing to object to another party leading their witnesses, may do so by way of letter addressed to the Chairperson, copied to all parties.

BY RULING OF THE COMMISSION

28 November 2025"

87. The Commission then adjourned to consider the Calata Group request as per their reasons set out in their submissions and the substantive objections of the opposing parties (as per paragraphs 3 and 4 of the ruling). Future requests in terms of Rule 3.1 are to be dealt with in terms of the informal procedure laid down in paragraphs 5 to 7 of the ruling. The ruling was posted on the Commission's website under the rulings tab.

88. Mbeki now sees fit to accuse Judge Khampepe of not applying her mind to the objections and simply endorsing or rubberstamping the request. It is a serious accusation to make against one of the most experienced judges in South Africa. The accusation is made without putting up any evidence. It amounts to nothing

more than conjecture on the part of Mbeki.

89. It is also noted that in making these accusations Mbeki departs from the submissions (dated 5 September 2025) his legal team made on his behalf. In the earlier submissions, the Mbeki team stated "*First, we do not (in principle) object to a legal representative leading a witness.*"

90. However, they claimed that the proper process was not followed and that accordingly there was no request before the Commission and no official decision was taken. They recommended that the Calata group resubmit their request in the proper manner.

91. Although the Mbeki team had no in-principled or substantive objection to legal representatives leading witnesses in early November, Mbeki now strenuously objects to the Commission "*permitting a party's own counsel, who is neither neutral nor institutionally accountable, to perform a central function reserved for the Evidence Leaders.*"

92. It is difficult to take the wildly erratic conduct of Mbeki seriously and we suggest that the Commission should view his application in the same light. His application is to put it mildly, ill-considered and frivolous.

Application to recuse Semenya

93. Mbeki further criticises Judge Khampepe for her handling of the application to recuse Semenya as Chief Evidence Leader, an application that he chose not to pursue or support.

94. Mbeki accuses the Chairperson of "*abdicating her duties and responsibilities*",

"*turning a blind eye*" and "*aiding and abetting*" Semenya in matters "*touching on the very conflict of interest raised against him*".

95. Mbeki was referring primarily to the contention that Semenya, in conducting an interview with a former senior prosecutor, had not complied with the Chairperson's directive of 19 September 2025. Disturbingly, the Mbeki affidavit makes no reference to the finding of the Chairperson at paragraph 58 of her ruling issued on 4 December 2025:

> "Given that I conclude that there is no basis upon which Semenya SC's role in Nkadimeng serves to disqualify him as chief evidence leader, the logical basis for that preliminary direction falls away and must be read *pro non scripto*."

96. Since the Chairperson had concluded that Semenya's earlier involvement in the Nkadimeng litigation did not amount to a conflict, there was no basis to exclude him from dealing with matters relating to the Prosecution Policy amendments, meaning that her earlier directive fell away.

97. Notwithstanding this finding, which is not impugned by Mbeki, he saw fit to castigate the Chairperson in emotive terms.

TEST FOR RECUSAL

98. This section is largely composed of legal argument which we will address in our heads of argument.

99. The factual claims and legal conclusions made in connection with the Chairperson, such as those in paragraphs 58 to 60, are specifically disputed.

AT

24

QUESTION OF PREJUDICE

100. This section of Mbeki's affidavit and the sections which follow are repetitive in nature and do not require specific responses.

101. Mbeki alleges that prejudice follows because the allegations against him are serious which may result in some form of sanction. This on its own does give rise to a claim of prejudice.

102. Mbeki then claims that the Chairperson's "*historical proximity to the subject matter*" combined with her handling of the objections "*undermine confidence in the procedural neutrality of the Commission*" gives rise to a "*reasonable apprehension that she may not approach these proceedings with the necessary detachment and impartiality.*"

103. The claim of prejudice rests on the manifestly faulty premise that '*historical proximity to the subject matter*' is a valid ground of recusal. It is not.

104. Equally fanciful is the flimsy claim that the Chairperson is not '*procedurally neutral*'. As mentioned above, Mbeki has not come close to demonstrating this. His claim is deeply undermined by his egregiously late application for recusal and his erratic conduct in the proceedings before the Commission.

105. Mbeki has not made out the slightest basis for his allegation of prejudice.

CONCLUSION

106. Former President Mbeki brought this application more than 7 months after learning that Judge Khampepe was the Chairperson of this Commission. He did so without offering even the barest explanation for such conduct.

AT AM

25

107. Mbeki then attempted to embroider his out of time application with last minute accusations in relation to procedural fairness in an interlocutory matter in which he saw no need to take part; and in another where he only raised a technical objection.

108. It would be difficult to conjure up more opportunistic conduct. His application cannot be considered in a serious light.

109. In this matter, the claims of Mbeki fall hopelessly short of rebutting the presumption that judicial officers are impartial in adjudicating disputes given their legal training, oath of office, intellectual discipline and experience.

WHEREFORE the application for the Chairperson's recusal and other relief sought falls to be dismissed.

ASMITA THAKOR

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Sandton on 6th of January 2026, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

Full names: Thandiwe Mazibuko

Business address: 4th Floor, North Wing 90 Rivonia Road Sandton

Designation: Accountant

Capacity: France, Accountant

COMMISSIONER OF OATHS (RSA)
THANDIWE MAZIBUKO BA (SA)
MEMBERSHIP No.: 13548
4TH FLOOR, NORTH WING
90 RIVONIA ROAD
SANDTON, JOHANNESBURG 2196

"A"

AC/99/0350

TRUTH AND RECONCILIATION COMMISSION

AMNESTY COMMITTEE

APPLICATION IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, NO. 34 OF 1995.

ERIC ALEXANDER TAYLOR 1ST APPLICANT

(AM 3917/96)

GERHARDUS JOHANNES LOTZ 2ND APPLICANT

(AM 3921/96)

NICHOLAS JAKOBUS JANSE VAN RENSBURG

(AM3919/96) 3RD APPLICANT

HAROLD SNYMAN 4TH APPLICANT

(AM3918/96)

JOHAN MARTIN VAN ZYL ("Sakkie") 5TH APPLICANT

(AM3751/96)

HERMANUS BAREND DU PLESSIS 6TH APPLICANT

(AM4384/96)

EUGENE ALEXANDER DE KOCK 7TH APPLICANT

(AM0066/96)

DECISION

The applicants make application in terms of Act 34 of 1995 as amended ("the Act") for amnesty in respect of the murders of Matthew Goniwe, Sparrow Mkhonto, Fort Calata and Sicelo Mhlauli respectively ("the deceased"). The first mentioned three deceased were residents of Cradock while Mr Mhlauli was a permanent resident of Oudtshoorn at the time of the incident. He was a friend of Goniwe and formerly a resident of Cradock. The murders were committed at or near Port Elizabeth on or about the 27th June 1985.

On the morning of the 27th June 1985 some of the applicants, who were all members of the Security Branch, South African Police station at Port Elizabeth at the material time, received information that Goniwe was scheduled to attend a meeting with Professor Swartz at Port Elizabeth later that day and was scheduled to return to Cradock thereafter. The plan devised by the applicants to murder him was then put into operation. Johan Martin van Zyl,(also known as "Sakkie"), was charged with handling the operation which included the execution thereof. The

Just before this decision was about to be delivered, the Committee was informed of an intended application by the families of the deceased to lead further evidence and consequently to re-open the hearing. We heard argument on behalf of the families of the deceased as well as the applicants and reserved our decision on the application. We will furnish reasons for our decision thereon if necessary and upon request. Suffice it to indicate that we rule that the application to lead further evidence is refused.

Because of the lacunas in the applicants' version (except De Kock) and the lack of details referred to above, we have reservations as to whether the requirement related to political objectives have been complied with. On the other hand, apart from De Kock, they have failed to disclose everything they know about the murders.

In the result we are not satisfied that the applicants, but for De Kock, have complied with the requirements of the Act.

Consequently the applications of Taylor, Lotz, Van Rensburg, Snyman, Van Zyl and Du Plessis for amnesty in respect of the murders of Matthew Goniwe, Sparrow Mkhonto, Fort Calata and Secelo Mhlauli together with all the other offences incidental to the commission of those offences are **REFUSED**.

The application of De Kock in respect of defeating the ends of justice and any offence incidental there to is **GRANTED**.

SIGNED AT ..... THIS ..... DAY OF ..... 19...

_____

JUDGE R PILLAY

_____

ACTING JUDGE D POTGIETER

_____

DR T TSOTSI

_____

ADV F BOSMAN

_____

ADV S SIGODI

"B"

76 These then are, in summary, the main findings of the Commission, while more specific findings appear in the body of the report. The Commission's case in regard to the primary actors to the conflicts of the past is developed below.

■ PRIMARY FINDING

77 On the basis of the evidence available to it, the primary finding of the Commission is that:

THE PREDOMINANT PORTION OF GROSS VIOLATIONS OF HUMAN RIGHTS WAS COMMITTED BY THE FORMER STATE THROUGH ITS SECURITY AND LAW-ENFORCEMENT AGENCIES.

MOREOVER, THE SOUTH AFRICAN STATE IN THE PERIOD FROM THE LATE 1970S TO EARLY 1990S BECAME INVOLVED IN ACTIVITIES OF A CRIMINAL NATURE WHEN, AMONGST OTHER THINGS, IT KNOWINGLY PLANNED, UNDERTOOK, CONDONED AND COVERED UP THE COMMISSION OF UNLAWFUL ACTS, INCLUDING THE EXTRA-JUDICIAL KILLINGS OF POLITICAL OPPONENTS AND OTHERS, INSIDE AND OUTSIDE SOUTH AFRICA.

IN PURSUIT OF THESE UNLAWFUL ACTIVITIES, THE STATE ACTED IN COLLUSION WITH CERTAIN OTHER POLITICAL GROUPINGS, MOST NOTABLY THE INKATHA FREEDOM PARTY (IFP).

■ FINDINGS IN RESPECT OF THE STATE AND ITS ALLIES

I further do not believe the political defence of 'we did not know' is available to me because in many respects I believe we did not want to know. (Mr Leon Wessels, State Security Council hearing.)

The Security Forces will hammer them, wherever they find them. What I am saying is the policy of the government. We will not sit here with hands folded waiting for them to cross our borders. We shall carry out ongoing surveillance. We shall determine the correct targets and we shall settle the hash of those terrorists, their fellow-travellers and those who help them. (General Magnus Malan, Minister of Defence, parliamentary speech, 4 February 1986.)

All the powers were to avoid the ANC/SACP achieving their revolutionary aims and often with the approval of the previous government we had to move outside the boundaries of our law. That inevitably led to the fact that the capabilities of the SAP, especially the security forces, included illegal acts. (General Johan van der Merwe, former commissioner of police, armed forces hearing.)

There was never any lack of clarity about 'take out' or 'eliminate', it meant that the person had to be killed. (Brigadier Alfred Oosthuizen, former head of Security Branch intelligence section, armed forces hearing.)

AT9M