

**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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

NOTCE OF APPLICATION

TAKE NOTICE THAT the applicants hereby apply to the 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**”), on a date to be determined by the Commission, for a ruling in the following terms:

1. Non-compliance with the directive issued by the Chairperson of the Commission on 3 December 2025 is condoned; and
2. The Chairperson of the Commission is recused from the Commission.

TAKE FURTHER NOTICE THAT the affidavit of **Thabo Mvuyelwa Mbeki** together with the confirmatory affidavits of former Ministers Brigitte Mabandla, Thoko Didiza, Ronnie Kasrils and Charles Nqakula are annexed in support of the application.

TAKE FURTHER NOTICE THAT if any interested party wishes to oppose the application, they may do so in accordance with the timeframes set out in the directive dated 3 December 2025.

DATED AND SIGNED AT SANDTON ON 19 DECEMBER 2025.



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

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In the matter for the recusal application of the Commission Chairperson Justice Sisi Khampepe

FOUNDING AFFIDAVIT

Recusal of Commission Chairperson, Justice Sisi Khampepe

I, the undersigned,

THABO MVUYELWA MBEKI

do hereby make oath and state that:

- 1 I am an adult, and the former Deputy President (1994 until 13 June 1999) and President (14 June 1999 to 24 September 2008) of the Republic of South Africa.
- 2 Unless otherwise stated or indicated by the context, the facts contained in this affidavit are within my personal knowledge and are to the best of my knowledge and belief both true and correct. Where I make submissions of a legal nature, I do so on the advice of my legal representatives. I accept such advice as correct.
- 3 I depose to this affidavit on my own behalf, as well as on behalf of Mrs Brigitte Mabandla ("Mrs Mabandla"), Mr Charles Nqakula ("Nqakula"), Mrs Thoko Didiza ("Mrs Didiza") and Mr Ronnie Kasrils ("Mr Kasrils") (collectively, "the former members of the executive"). Their confirmatory affidavits are filed together with this affidavit.

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- 4 The purpose of the affidavit is to support an application for the recusal of the Chair of the *Judicial Commission of Inquiry in allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases* (“**Commission**”).
- 5 The Commission was established following an application¹ brought by families and victims of apartheid-era crimes (“**Calata matter**”). In that application, the applicants seek declaratory orders and constitutional damages for what they allege to be a failure to investigate or prosecute the cases that were referred to the National Prosecution Authority (“**NPA**”) for investigation and prosecution by the Truth and Reconciliation Commission (“**TRC cases**”).

INTRODUCTION

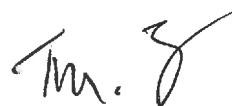
- 6 In this application, I seek an order directing the recusal of Justice Khampepe, Justice Sisi Khampepe (“**Justice Khampepe**”), from any further participation in proceedings before the Commission.
- 7 The relief sought rests on two distinct, but mutually reinforcing grounds, each of which independently gives rise to a reasonable apprehension of bias on the part of Justice Khampepe.
 - 7.1 The first ground concerns Justice Khampepe’s past institutional involvement in matters directly connected to the TRC investigations and the NPA, as detailed below, which creates an objectively grounded

¹ In the Gauteng Division of the High Court, Pretoria (under case number 2025-005245).

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concern that she may not bring the requisite detachment and impartiality to an inquiry scrutinising conduct and decisions of institutions in which she previously played material roles.

- 7.2 The second ground, which compounds the first, is Justice Khampepe's:
 - (a) manner of handling conflict-of-interest objections pertaining to Advocate Ishmael Semenza SC ("Adv Semenza SC"), who is the Chief Evidence Leader for the Commission; and (b) her endorsement of a procedurally irregular arrangement between Adv Semenza SC and Advocate Howard Varney ("Adv Varney"), which permits Adv Varney to lead the Calata Group's witnesses. The arrangement between Adv Semenza and Adv Varney, despite being endorsed by the Commission (under leadership of Justice Khampepe) came about as a result of opaque and bilateral interactions between them.
- 8 Together, these grounds strike at the heart of the Commission's institutional integrity and render Justice Khampepe's continued involvement untenable.
- 9 I emphasise that this application does not question Justice Khampepe's personal integrity or judicial standing. It is directed at structural and procedural features of the present inquiry which, viewed objectively, give rise to a reasonable apprehension of bias.
- 10 As a party whose name, conduct, or decisions during my Presidency may be referenced or scrutinised in the proceedings, I have a direct, substantial and

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legally recognised interest in ensuring that the Commission conducts its work with unimpeachable fairness, transparency, and impartiality.

- 11 To the extent necessary, I seek condonation for the late filing of the application.

BACKGROUND

- 12 The President established the Commission under section 84(2)(f) of the Constitution. On 25 May 2025, he issued Terms of Reference directing the Commission to investigate whether any efforts or attempts were made to stop the investigation or prosecution of TRC cases. In accordance with the Terms of Reference, the Commission may refer any matter for criminal prosecution.
- 13 On 3 December 2025, the Commission sent to all interested and affected parties, a letter from the legal representatives of former President JG Zuma (annexure "TMM1"), in which he requested Justice Khampepe's recusal on grounds set out in that correspondence. On the back of that correspondence, the Commission invited any party wishing to participate in the recusal process to do so timeously.
- 14 I am a party before the Commission, having been issued with a rule 3.3 notice to provide information and potentially to give evidence. I therefore have a direct, substantial, and legally recognised interest in ensuring that the Commission conducts its work with unimpeachable fairness, transparency, and impartiality.

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GROUND ONE: JUSTICE KHAMPEPE'S PRIOR ROLES AND REASONABLE APPREHENSION OF BIAS

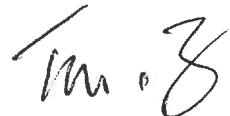
15 Justice Khampepe's recusal relates to her prior involvement in the very institutions and processes at the centre of this Commission's mandate, namely the TRC and the NPA, including a structural unit within the NPA that directly dealt with TRC cases.

Justice Khampepe's previous role as TRC Commissioner

16 Justice Khampepe was appointed by President Nelson Mandela as a TRC Commissioner, on 15 December 1995. Her tenure as such expired on 31 March 2001 (see annexure "TMM2"). She served as a member of the TRC Amnesty Committee from 1996 until 2001 (annexure "TMM3"). The TRC Committee was responsible for assessing and determining amnesty applications brought by perpetrators of apartheid-era offences. Stated otherwise, the TRC Committee decided whether to grant or refuse amnesty to the various persons that applied for it.

17 In 1999, Justice Khampepe would have presided over, or participated in the amnesty applications of the accused persons in the Cradock Four matter. These were: Mr Harold Snyman, Mr Hermanus Berend du Plessis, Mr Nicholaas Janse van Rensberg and Mr Eugene de Kock. The Cradock Four matter involved Mr Calata's father, and only Mr de Kock was granted amnesty.²

² The Cradock Four Inquest, which revisits these events and actors, remains ongoing and has been postponed to 23 March 2026.



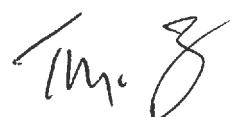
18 As a TRC Commissioner, Justice Khampepe formed part of the panel that concluded that the ANC had committed gross human rights violations in the course of its political activities during the armed struggle (see annexure "TMM4"). These findings are set out in Volume 5 of the TRC Report, presented to President Mandela on 29 October 1998.

19 These amnesty determinations lie at the heart of the TRC's recommendations on prosecutions, which this Commission has been established to reconsider and account for.

20 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.

21 The appearance of partiality is further heightened by the fact that some participants before this Commission, particularly the Calata family, were involved in TRC processes in which Justice Khampepe personally participated.

22 In these circumstances, the cumulative effect of Justice Khampepe's prior adjudicative role in TRC processes, her participation in amnesty determinations directly concerning the Calata family, and her authorship of findings now under renewed scrutiny gives rise to a reasonable apprehension that she may not bring the necessary degree of institutional detachment to this Inquiry. My apprehension does not rest on actual bias; rather, it arises from the unavoidable

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overlap between Justice Khampepe's past adjudicative roles and her present fact-finding responsibilities.

Justice Khampepe's prior role as the Deputy Director of Public Prosecutions

23 Justice Khampepe served as Deputy National Director of Public Prosecutions under then National Director of Public Prosecutions, Advocate Bulelani Ngcuka, from September 1998 to December 1999. This period coincides with the establishment and operationalisation of the Human Rights Investigation Unit ("HRIU") within the NPA. The HRIU's mandate was to review TRC amnesty records, investigate apartheid-era human rights violations, and make recommendations on the prosecution of TRC matters. (See annexures "TMM5.1 and 5.2").

24 As appears from the Webber Wentzel letter of 11 November 2025 (annexure "TMM5.1"), Justice Khampepe *"played a role in the HRIU"*, including providing advice to the National Director of Public Prosecutions ("NDPP") on the approach to TRC matters.

24.1 Mr Anton Ackermann's affidavit, (attached as "FA8" to the Calata papers before the High Court), outlines the responsibilities of the HRIU³. It records that the Unit was tasked with reviewing non-amnesty cases and amnesty refusals, addressing the backlog of TRC-related prosecutions,

³ Paragraphs 10 – 11.

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and overseeing the transfer of dockets to Special Operations structures (later the Directorate of Special Operations).

- 25 Although the precise nature of Justice Khampepe's involvement in the HRIU requires further factual clarification, the overlap between her TRC adjudicative role, her prosecutorial oversight role, and the current Commission's mandate cannot be ignored. Compounding this is that Justice Khampepe, knowing the full facts, may feel obligated to clarify the aforesaid role, further drawing her into the intersection of the role of a witness and that of the fact finder. This is untenable.
- 26 The reasonable observer would apprehend that a person who previously had institutional responsibility for shaping NPA policy on TRC cases would find it difficult to approach with neutrality a Commission now tasked to determine whether the NPA failed, neglected, or improperly refrained from pursuing those very cases.
- 27 Notably, the timelines show that Justice Khampepe's TRC role (1995 – 2001) overlapped to some extent with her NPA senior management role (1998 – 1999). During this overlap, she was simultaneously an adjudicator in the Amnesty Committee and a senior official responsible for prosecutorial policy relating to TRC matters.
- 28 This Commission is mandated to investigate whether, during *that very period*, steps were taken, or not taken, to pursue TRC-related prosecutions, and whether political or institutional pressure contributed to such failures (if any).

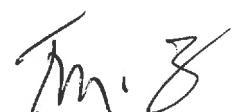
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29 In any event what remains anomaly in this matter is the very period within which the commission is asked to investigate this matter. It is not clear why when the TRC submitted its report in 1998, which must have surely set the motion as to what needs to be done with those whose Amnesty Application was denied. The question must have arisen before 2003 as to what must be done with those who have not applied for the Amnesty but continue to claim that they acted on political instructions.

30 During this period Justice Khampepe was an active participant both in her role as part of the TRC or its Amnesty Committee and also as a member of the Country's Directorate of Prosecution. The issue of the time-period delineated by the Terms of the commission is itself irrational and would instruct our legal team to raise this anomaly.

31 A reasonable observer would apprehend that Justice Khampepe may have an institutional interest, conscious or unconscious, in validating the propriety of decisions made during her own tenure.

32 In light of Justice Khampepe's: (i) historical adjudicative role at the TRC; (ii) membership of the Amnesty Committee; (iii) direct involvement in the Cradock Four context; (iv) co-authorship of TRC findings now under scrutiny; (v) senior leadership role at the NPA during the very period under review; (vi) apparent involvement in the HRIU, the prosecutorial unit that handled TRC docket referrals; a reasonable, objective and fully informed observer would apprehend

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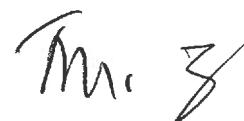
that she may not bring the required degree of independence, neutrality, and institutional detachment to the present Inquiry.

- 33 These overlapping institutional roles, supported by documentary evidence and confirmed in official reports and correspondence, give rise to a reasonable apprehension of bias. The apprehension does not relate to personal integrity, but to structural, historical and institutional proximity to the very subject matter now placed before the Commission.
- 34 A reasonable, objective and informed observer, aware of Justice Khampepe's extensive involvement in TRC findings, TRC amnesty determinations, and prosecutorial policy structures inside the NPA, would apprehend that she may not approach the present Inquiry with the degree of institutional detachment required.

GROUND TWO: THE ADV SEMENYA SC OBJECTIONS

- 35 The second ground concerns Justice Khampepe's handling of a series of objections raised by several parties before the Commission, including the NPA, Department of Justice, South African Police Service, and members of the former executive. The objections related to:

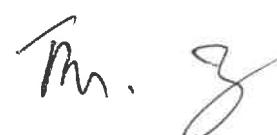
- 35.1 a private and previously undisclosed arrangement concluded on 29 September 2025 between Adv Semenya SC and Adv Varney (for the Calata applicants), without the knowledge of the other parties. In terms of this arrangement, Adv Varney would lead the evidence of the Calata

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witnesses, instead of the Commission's appointed Evidence Leaders. This arrangement emerged only on 27 October 2025 during the pre-hearing meeting, following probing by the other parties;

- 35.2 the absence of any lawful directive authorising such an arrangement from Justice Khampepe, prior to 2 December 2025, despite Rule 3.1 requiring a clear, reasoned, and transparent deviation from the norm;
- 35.3 while the Regulations and Rules of the Commission permit a party to seek leave to lead its own witnesses, this may occur only pursuant to a formal application, supported by cogent reasons, directed to Justice Khampepe and permission to do so is supposed to be a justified exception and not a wholesale rule.
 - 35.3.1 No such application was brought by the Calata Group before 27 October 2025, nor was the prescribed procedure followed before the impugned private arrangement referred to above; and
- 35.4 conflicts of interest concerning Adv Semenza SC, who was previously involved in advising the NPA on issues directly linked to the matters before the Commission, and who later breached a directive prohibiting him from engaging on prosecution-policy matters.

36 These issues were not speculative. They were formally raised by various parties in the pre-hearing meeting of 27 October 2025 and in subsequent written submissions (see annexure "TMM6").

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37 Following the pre-hearing meeting of 27 October 2025, the Commission circulated a letter addressed to Justice Khampepe by the Calata Group (through their legal representatives of record – Webber Wentzel), dated 18 September 2025 (annexure “TMM7”). In that letter, the Calata Group drew attention to a potential conflict of interest concerning Adv Semenya SC on a discrete issue and suggested that he not be “*involved in any deliberations or leading or cross-examination of witnesses in relation to the amendments of the Prosecution Policy.*” The letter reads as follows, in part:

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

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

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

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

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



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

38 Justice Khampepe responded to the Calata Group's letter by correspondence dated 19 September 2025 (annexure “TMM8”), as follows:

“2. I have sent the letter to Adv Semenya SC for his response.

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

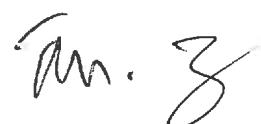
4. Having considered the concerns of your client and having heard Adv Semenya SC's response, I am minded going with a solution you propose. The concerns expressed by your client are noted. I make no decision on them. I will have another member of the Evidence Leader deal with this aspect.”

39 I must point out that the objections from the various parties, including myself and members of the former executive, were serious, substantive, and rooted in procedural fairness, institutional neutrality, and compliance with the Commission's own Rules.

Justice Khampepe's failure to interrogate the objections

40 Justice Khampepe was required by the Commission's Rules and Regulations, and the imperatives of natural justice, to:

40.1 properly investigate the existence, nature, and propriety of Adv Semenya's private arrangement with Adv Varney in relation to the leading of witnesses;



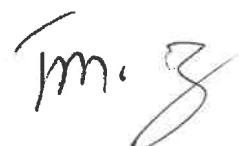
- 40.2 determine whether there was a lawful request for deviation from Rule 3.1;
- 40.3 consider whether the arrangement jeopardised procedural fairness; and
- 40.4 ensure whether there was disclosure of relevant correspondence to all participants pursuant to the private arrangement.

41 Respectfully, Justice Khampepe did not do that. Rather, she endorsed the above arrangement in her ruling dated 2 December 2025 (annexure “TMM9”).

42 Although the Calata Group had raised a request concerning the leading of their witnesses, the Regulations and Rule 3.1 make plain that such a deviation from the default position, namely, that evidence is presented by the Evidence Leaders, may only be granted in exceptional circumstances, upon a properly motivated, case-specific formal request directed to Justice Khampepe.

43 Justice Khampepe’s ruling of 2 December 2025, however, granted a blanket authorisation for Adv Varney to lead all eight of the Calata witnesses without providing any reasons for the deviation and without applying the case-by-case assessment required by the Rules. In doing so, an extraordinary procedural exception was elevated into the norm, permitting a party’s own counsel, who is neither neutral nor institutionally accountable, to perform a central function reserved for the Evidence Leaders.

44 Matters worsened when further information emerged, set out in the NPA’s supplementary affidavit filed in support of its own recusal application and attached as annexure “TMM10”, that Adv Semenya SC had actively participated

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in questioning a former Acting National Director of Public Prosecutions during an interview on 13 November 2025. As recorded in that affidavit, this line of questioning traversed aspects of the Prosecution Policy and related matters that formed the very subject of the conflict previously raised. This conduct stood in direct breach of Justice Khampepe's written directive of 18 and 19 September 2025 that Adv Semenza SC was not to engage in any questioning, deliberation or participation on issues relating to the Prosecution Policy or the NPA, given his prior advisory role. The breach occurred before Justice Khampepe delivered her ruling on the recusal applications on 2 December 2025 and materially informed the concerns that now arise.

- 45 This breach undermined Justice Khampepe's stated attempt to "create a buffer" between Adv Semenza and issues involving the NPA, reinforced the structural conflict of interest, and materially heightened concerns about the neutrality of the evidence-leading process.
- 46 Even after these facts surfaced, Justice Khampepe did not reconsider the propriety of the arrangement but rather endorsed it through her ruling of 2 December 2025.
- 47 My attorneys requested reasons for Justice Khampepe's decision. I attach a copy of the request as "**TMM 11**". Justice Khampepe summarily refused the request for reasons. This undermined accountability and transparency. I attach a copy of the refusal as "**TMM 12**".

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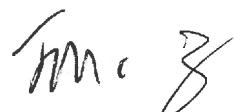
48 Justice Khampepe's own conduct in relation to the Adv Semenya SC matter gives rise to an independent and serious ground for recusal. Despite repeated warnings by affected parties and notwithstanding her own directive of 19 September 2025, Justice Khampepe abdicated her duties and responsibilities as the head of the Commission and, in effect, permitted Advocate Semenya SC to participate in matters squarely touching on the very conflict of interest raised against him. She did so by neither interrogating the concerns placed before her nor enforcing her own ruling. Instead, she allowed conduct that was irregular, unauthorised and constitutionally impermissible to occur under her watch.

49 In particular, Justice Khampepe aided and abetted Advocate Semenya SC's continued involvement in engagements with witnesses on subject matter falling within his alleged conflict. She turned a blind eye to his undue participation, thereby compromising the independence and integrity of the evidence-leading process. In doing so, she rendered herself directly or indirectly complicit in unconstitutional conduct and conduct inconsistent with the standards applicable to a judicial office-holder.

50 Justice Khampepe's conduct further entrenched the reasonable apprehension that she was unwilling to confront Semenya's irregular conduct.

APPLICABLE TEST FOR RECUSAL

51 My legal representatives will, in due course, deal with the fulness of the applicable legal principles on the subject of recusals. It, however, suffices for me to observe at this stage that Justice Khampepe, as the Chairperson, is the

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primary decision-maker of the Commission. Her rulings, procedural directions and evidentiary management determine the trajectory, content and final recommendations of the Commission.

52 I have been advised that the test for recusal is well established. In *President of the Republic of South Africa and Others v South African Rugby Football Union and Others - Judgment on recusal application* ("SARFU"), the Constitutional Court held that the test for bias is:-

"Whether a reasonable, objective and informed person would, on the correct facts, reasonably apprehend that the judicial officer has not brought or will not bring an impartial mind to bear on the adjudication of the case. . .

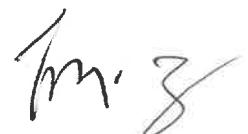
."⁴

53 The standard is an objective one.

54 In *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another*, the Constitutional Court underscored the centrality of judicial impartiality and independence. The Court held as follows:

"The impartiality and independence of Judicial Officers are essential requirements of a constitutional democracy and are core components of a constitutional right of access to courts. It is these requirements that constitute the source of public trust in the Judiciary and in the administration of justice in general. And because impartiality of Judicial Officers and the impartial adjudication of disputes of law constitutes the

⁴ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others - Judgment on recusal application* (CCT16/98) [1999] ZACC 9; 1999 (4) SA 147; 1999 (7) BCLR 725 (4 June 1999) ("SARFU"), para 48.



*bedrock upon which the rule of law exists, there must, in any sound legal system, exist a general presumption of impartiality on the part of the Judicial Officers.*⁵

55 On the notion of apprehended bias, the Constitutional Court in SARFU explained that the inquiry is what an informed person, viewing the matter realistically and practically and having thought it through, would conclude.⁶

56 The test is objective and does not require actual bias. It is sufficient if there exists a reasonable apprehension of bias.

57 The obligation upon decision-makers is not merely to avoid actual partiality but also to avoid creating the appearance of institutional alignment, pre-judgment, or uncritical acceptance of irregular conduct.

58 A reasonable observer, apprised of the facts, would be alarmed that Justice Khampepe:

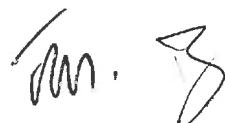
58.1 in her 2 December 2025 ruling, endorsed an irregular, and undisclosed private arrangement only disclosed to the rest of the parties on 27 October 2025;

58.2 declined to interrogate a clear breach of her own directive; and

58.3 treated serious objections by multiple parties as though they were insignificant or unworthy of engagement.

⁵ *South African Human Rights Commission obo South African Jewish Board of Deputies v Masuku and Another* [2022] ZACC 5: 2022 (7) BCLR (CC); 2022 (7) BCLR 850 (CC) para 56.

⁶ SARFU, para 45.



59 The perception created is that Justice Khampepe is predisposed to preserve Adv Semenya SC's involvement, regardless of procedural irregularities or fairness concerns.

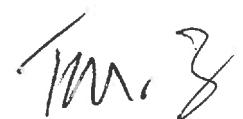
60 In these circumstances, a reasonable, objective and informed person would apprehend that Justice Khampepe may not bring an impartial, open and enquiring mind to matters involving the Semenya SC issue.

PREJUDICE TO ME AS AN INTERESTED PARTY

61 The Commission's work touches directly allegations that certain decisions were taken during my tenure as President of the Republic, and implemented in various ways by the former Ministers. Those allegations are the backbone of the Calata group's claim to constitutional damages from the government, in their proceedings before the high court. The allegations are serious and may result in criminal charges against me and/or the former Ministers.

62 I am entitled to a Commission presided over by a Chairperson who applies her mind to all relevant matters, responds appropriately to evidence of irregularity, and ensures procedural fairness that is, and is seen to be, fair.

63 Taken together, Justice Khampepe's prior institutional roles within the TRC and the NPA, and her subsequent handling of objections relating to Adv Semenya SC, undermine confidence in the procedural neutrality of the Commission. The combination of her historical proximity to the subject matter and the manner in which recent procedural irregularities were managed gives rise to a reasonable

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apprehension that she may not approach these proceedings with the necessary detachment and impartiality. The integrity of the process is paramount. Where the process is compromised, the legitimacy of the Commission's eventual findings is jeopardised.

CONDONATION

64 To the extent necessary, I seek condonation for the late filing of this application. In terms of the Commission's directive dated 11 December 2025, parties who wanted to support or oppose the recusal application by Mr Zuma were required to do so "in line with the timelines indicated" in that directive, i.e. the founding papers were to be filed by no later than 15 December 2025. I am advised by my legal representatives that the application on behalf of Mr Zuma was filed on 15 December 2025. It was necessary for the legal representatives to consider the substance of the grounds of recusal so that a decision could be made whether or not to support the application. Once that assessment was done, this application was finalised and delivered as soon as possible.

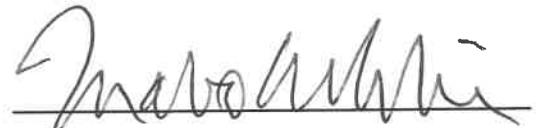
CONCLUSION

65 For the reasons set out above, the cumulative effect of Justice Khampepe's prior involvement in the TRC and the NPA, together with her handling of objections pertaining to Adv Semenya SC, gives rise to a reasonable apprehension of bias when viewed through the eyes of the informed, objective observer. These

A handwritten signature in black ink, appearing to read "Mr. Z", with the number "20" written to the right of the signature.

concerns are structural, procedural, and institutional in nature, and they go to the heart of the Commission's fact-finding integrity.

- 66 In matters of this gravity, which engage long-standing allegations of interference in TRC prosecutions, the rights of victims and families, and the functioning of core constitutional institutions, public confidence in the Commission's independence and impartiality is indispensable. The appearance of impartiality is as vital as impartiality itself.
- 67 In these circumstances, and with respect, I submit that Justice Khampepe should recuse herself from further participation in the Commission. Doing so will safeguard both the integrity of the process and the legitimacy of the Commission's eventual findings. I accordingly request that the relief sought in this affidavit be granted.



THABO MVUYELWA MBEKI

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposited before me at Johannesburg on this the 17th day of **December 2025**, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.





COMMISSIONER OF OATHS

ZWANE UYANDA ZWANE
PRACTISING ATTORNEY
EX OFFICIO COMMISSIONER OF OATHS
KOIKANYANG HOUSE
47, 7TH STREET
HOUGHTON ESTATE, JOHANNESBURG



43 Wierda Road West | Wierda Valley | Sandton | 2196

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**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. Semenya 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 Semenya 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 Semenya SC in that she has, *inter alia*, abdicated her duties, responsibilities and independence as the Chairperson

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

Directors: TS Kwinana B Juris (Unistra), LLB (Rhodes) | BB Sibya LLB (UJ) | Z Mbana LLB (WSU)
Consultant: S Gobole B. Tech - Internal Audit (WSU), MPA, LLB (Fort Hare)
Office Administrator: LG Ncube LLB (Fort Hare)

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



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 recusale. 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

TMJ 2



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,

A handwritten signature in black ink, appearing to read 'Thabo Kwinana'.

KMNS INC.
per: THABO KWINANA

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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

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03 December 2025

Dear Interested and Affected Party

RE: THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES (TRC CASES INQUIRY)

1. The Commission has received a request from KMNS Attorneys Incorporated, representing former President Zuma for the recusal of the Chairperson of the Commission.
2. The Chairperson has issued Directives with timelines for the address of that request. A copy of these Directives is attached herewith.
3. Any party seeking to participate in that application is required to adhere to the timelines indicated in those Directives.

Regards,



Khampepe J

Chairperson

ACTING CHIEF JUSTICE: JUSTICE SISI KHAMPEPE

The President has appointed Justice Sisi Khampepe of the Constitutional Court as Acting Deputy Chief Justice with effect from 1 May 2021. Chief Justice Mogoeng Mogoeng is on long leave. Because of his involvement with the Commission of Inquiry on State Capture, Deputy Chief Justice Raymond Zondo is not available to perform his usual duties. In terms of the Superior Courts Act, as Acting Deputy Chief Justice, Justice Khampepe will exercise the powers and perform the functions of the Chief Justice as Acting Chief Justice.

Justice Khampepe's illustrious legal career spans over 40 years. After graduating with an LLM degree from Harvard University in the United States of America, she served articles at Bowman Gilfillan. She later started her own practice under the name SV Khampepe Attorneys. Her main area of practice and for which she was renowned was the defence of workers against unjust laws and unfair employment practices.

Justice Khampepe served in a number of positions of note. In 1995 she was appointed by President Nelson Mandela as a Commissioner in the Truth and Reconciliation Commission. In 2004 President Mbeki appointed her to oversee the Zimbabwean elections. In February 2006 the Secretary-General of the Commonwealth, Hon Donald C McKinnon, seconded her as a member of the Commonwealth Observer Group to the Presidential and Parliamentary Elections in Uganda. In 2005 to 2006 she chaired a Commission of Enquiry that came to be known as the Khampepe Commission. The Commission looked into the mandate and location of the Directorate of Special Operations, commonly known as the Scorpions.

Justice Khampepe's judicial career commenced with her appointment to the Gauteng Division of the High Court in December 2000. She later served as Acting Deputy Judge

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President of the Labour Courts. Her well-deserved elevation to the apex court of the Republic, the Constitutional Court, took effect in October 2009

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JUSTICE SISI KHAMPEPE (2009-2021)

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PERSONAL DETAILS

Sisi Khampepe was born on 8 January 1957 in Soweto, Gauteng Province, South Africa. She is married with two children.

EDUCATION

She obtained her B Proc from the University of Zululand in 1980. She obtained her LLM degree at Harvard Law School, Massachusetts, USA in 1982.

PROFESSIONAL HISTORY

She began her legal career as a legal advisor in the Industrial Aid Society, where she did vacation employment from 1979 - 1980. Here she was exposed to the dishonourable employment conditions of Black workers. Between the years 1981 and 1983, she served as a fellow in the Legal Resources Centre.

In 1983 she joined Bowman Gilfillan Attorneys as a Candidate Attorney. After being admitted as an attorney in 1985, she established her own law firm, practicing under the name SV Khampepe Attorneys. Her law firm was especially renowned for defending the rights of workers against unjust laws and unfair employment practices. She also represented other human rights bodies such as hawkers, civic and black consumer union.

Her law firm was one of the few Black labour law firms in the country. She represented unions affiliated to both Nactu and Cosatu. She was the national legal advisor of SACAWU. She was the administrator of union funds in FIET and ICFTU.

In 1995 she was appointed by former President Mandela as a TRC Commissioner and in the following year she was a member of the TRC's Amnesty Committee. She was then employed by the Department of Justice and Constitutional Development as Deputy National Director of Public Prosecutions, a post she held from September 1998 to December 1999.

In December 2000, she was appointed as a Judge in the High Court (TPD). In the Labour Appeals Court in November 2007.

In the period April 2005 – 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 Operation (the Khampepe Commission).

In 2004, was appointed by former President Mbeki to oversee the elections in Zimbabwe.

In February 2006, the Secretary-General of the Commonwealth Hert Hon Donald C McKinnon, seconded her as a member of the Commonwealth Observer Group to the Presidential and Parliamentary Elections in Uganda.

She was Vice Chairperson of the National Council of Correctional Services since 2005 to April 2010.

In October 2009 she was appointed as a Judge to the Constitutional Court.

OTHER ACTIVITIES

Justice Khampepe has been involved in various legal and community organizations.

Legal organizations:

1981 – 1983: International Law Society, Harvard Law School

1985 – 2000: The Law Society of the TPL (Northern Province)

1985 – Date: Member of the Black Lawyers Association

1987 – Present: Association of Law Societies Community Organizations

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1978 – 1988: Facilitator of the Street Committee, Soweto
 1983 – 1986: Selection Committee Member of South African Legal Education Programme
 1985 – 1986: Legal Advisor of National Black Consumer Union
 1985 – 1986: Legal Advisor of Sechaba Sizwe Agricultural Cooperative
 1988 – 1989: Legal Advisor of African Council of Hawkers and Informal Business
 1988 – 1999: Vice Chairperson of Women's Desk on Children and Woman Abuse
 1988: Legal Advisor of the Orlando Pirates Football Club
 1990 – 1995: Trade Unions' Fund Administrator of Federation International Des Employes
 1993 – 1996: Vice Chairperson of the Mediation and Conciliation Centre
 1993 – 1999: Executive Committee Member of Lesego women's club
 1993: Trustee of SACCAWU Investment Trust 1994: Employment Advisory Centre
 1994: J G Strydom (Helen Joseph) Hospital Board of Governors
 1994: Selection Committee Member of Public Service Commission
 2006: Donor to the Sparrow Rainbow Village (AIDS Hospice)

Community Organizations:

1978 – 1988: Facilitator of the Street Committee, Soweto
 1988 – 1999: Vice Chairperson of Women's Desk on Children and Woman Abuse
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 1994: Selection Committee Member of Public Service Commission
 2006: Donor to the Sparrow Rainbow Village (AIDS Hospice)

THE HISTORY OF THE IDEA

The notion of a bill of rights for South Africa can be traced back to an ANC document in the early 1920s. The Freedom Charter of 1955 carried the idea forward.

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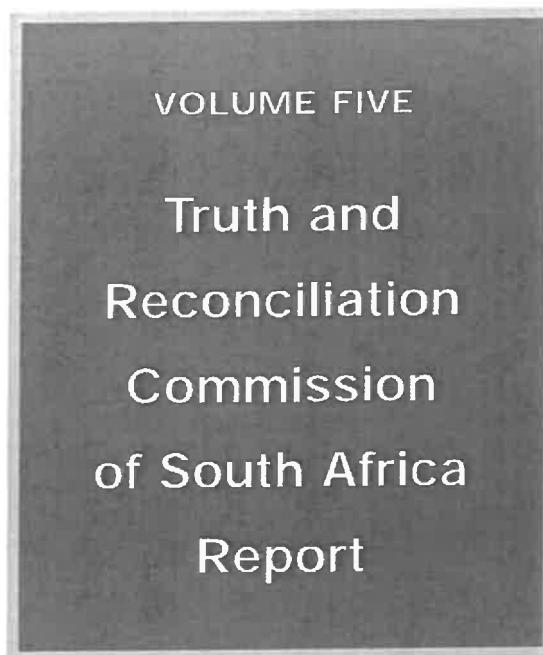
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The report of the Truth and Reconciliation Commission was presented to President Nelson Mandela on 29 October 1998.



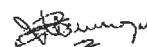
Archbishop Desmond Tutu
Chairperson



Ms Hlengiwe Mkhize



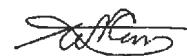
Dr Alex Boraine
Vice-Chairperson



Mr Dumisa Ntsebeza



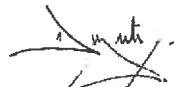
Ms Mary Burton



Dr Wendy Orr



Revd Bongani Finca



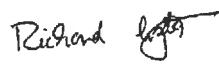
Adv Denzil Potgieter



Ms Sisi Khampepe



Dr Fazel Randera



Mr Richard Lyster



Ms Yasmin Sooka



Mr Wynand Malan*



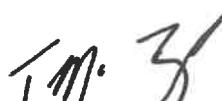
Ms Glenda Wildschut



Dr Khoza Mgojo

* Subject to minority position. See volume 5.

Chief Executive Officer: Dr Biki Minyuku



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The Chairperson**Justice Sisi Khampepe**

Commission of Inquiry, Stopped TRC Investigations and/or Prosecutions

and

Commissioner Justice Frans Diale Kgomotso

and

Commissioner Adv Andrea Gabriel

c/o The Secretary

By email: secretary@trc-inquiry.org.za90 Rivonia Road, Sandton
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TRC Cases InquiryOur reference
A Thakor / N Thema / J Venter /
LM Doubell / 4017862Date
11 November 2025

Dear Justice Khampepe and fellow commissioners

POTENTIAL FURTHER CONFLICTS & REQUEST FOR CLARITY ON PROCEDURE GOING FORWARD

1. We refer to the first day's sitting of the Commission into Stopped TRC Investigations and/or Prosecutions on 10 November 2025. The hearing was postponed to 26 November 2025 to permit the National Prosecution Authority (NPA) and Minister of Justice (MOJ) to apply for the removal of Adv Ishmael Semenya SC (Semenya) as Evidence Leader.
2. We write to express our clients' deep frustration with the collapse of the first sitting of the Commission's hearings.
3. Since by 10 November 2025, no party had applied for Semenya's recusal, our clients had not expected an adjournment for this purpose. When a procedure was put in place for the recusal, they assumed that Semenya would stand down, pending the outcome of recusal application, and that:
 - 3.1 arguments would proceed on whether the Calata group witnesses could be led by their own counsel, and
 - 3.2 this would be followed by opening statements and the family witnesses, led either by their counsel or the evidence leaders, depending on the ruling of the Commission.
4. Counsel for the NPA was aware of the Calata group's letter to you on 18 September 2025 in connection with Semenya's position, as well as your decision reflected in your 19 September letter. Both letters were forwarded to Adv Ntloko on those same dates, who acknowledged receipt.

Senior Partner: G Driver **Managing Partner:** S Patel **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AP Blair K Blom N Blom AJR Booysen AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya L de Bruyn PU Dela M Denenga C Dennehy DW de Villiers HM de Villiers ST Dias BEC Dickinson DA Dingley W Drue E Durman GP Duncan CP du Toit TC Dye L Dyer SK Edmundson LF Egypt KH Elser JC Els S Farren K Fazel G Fitzmaurice JB Forman L França M Garden MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green O Gusha JM Harvey JS Henning KR Hillis CM Hofield PM Holloway SJ Hutton KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser GR Kgale MT Kgoadi A Khumalo KE Kiliher MD Kota JC Kraamwinkel AC Kruger S Kruger J Lamb LC Lambrechts LM Lamola B Lötter E Louw CF Mackenzie M Mahlangu V Mannar CCT Marupen-Shkaidy G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela DR Mogapi P Mohanlall L Moolman LE Mostert VM Movshovich M Mpungose A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndweni ST Ngcamu LM Nkanza C Nethling PD Novotny M Nxumalo AN Nyatsumba MB Nzimande A October L Odendaal N Paige AS Parry GR Penfold SE Phajane M Philippides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts BJ Rule S Rule G Sader H Samsodien DA Serumula KE Shepherd ZK Sibeko N Singh N Singh-Nogueira CF Sieberhagen P Singh S Sithole J Smit C Smith P Soni MP Spalding MW Straeuli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessien TK Thekiso C Theodosiou T Theunissen R Tlhavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali N van Vuuren JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warmington J Watson M Wessels AWR Westwood RH Wilson JS Whitehead KD Wolmarans

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5. Despite being aware of the possible conflict of Semenya for close to 7 weeks, not only did the NPA not bring an application for his removal or recusal, but they did not even register the slightest concern or dissatisfaction with his position or the Chairperson's letter of 19 September 2025.
6. Only in their objection and arguments filed on 5 and 7 November 2025, addressing the question of the Calata group leading their witnesses, did the NPA and MOJ raise a general objection to his participation. Even by the start of the first hearing on Monday, 10 November 2025, neither party had prepared an application for his removal.
7. It is apparent that neither the NPA nor the MOJ had any intention of bringing a recusal application until the Commission put the question to their counsel on Monday morning. Counsel for the MOJ advised that her client abides by the Chairperson's ruling of 19 September 2025. Counsel for the NPA simply asserted that he would comply with any directions issued by the Commission.
8. In the circumstances we are of the respectful view that the NPA's apparent pursuit of a recusal application on the very day the hearings started, forcing a collapse of the long-scheduled hearings, while knowing about Semenya's position for some 7 weeks, amounts to an abuse of the commission process.
9. As a result of the NPA's conduct, the first hearing of the Commission, set down for 3 weeks, at which 15 witnesses were meant to testify, has collapsed. This has incurred a significant waste of taxpayer money, given the costs of the five government legal teams, the Commission itself, and those who are in attendance on their own steam.
10. We respectfully submit that the Commission can ill-afford to lose 3 weeks of hearings in light of how long the proceedings have already been delayed. More than 5 months have elapsed since the establishment of the Commission on 29 May 2025, and the Commission's operational mandate is nearly up.¹ The current sitting was set down between 10 and 28 November 2025, meaning it will have only 2 days remaining after the recusal arguments on 26 November 2025.

Possible further claims of conflict

11. We are concerned that down the road some parties may be preparing further applications that may also disrupt proceedings. In order to avoid more time being wasted, we wish to bring to the notice of the Commission and the parties the earlier roles played by members or staff of the Commission in TRC related work or matters that might be connected to the mandate.
12. From the outset we wish to state clearly that we do not regard the earlier posts held by these persons as disqualifying in any way, nor do we believe that they provide a basis for recusal.
- 12.1 We first refer to the fact that on 6 October 2008, Adv Ishmael Semenya SC was appointed as one of the legal advisors to the Enquiry into the Fitness of Adv V Pikoli to hold office as NDPP (the Ginwala Commission). One of the complaints made by former President Mbeki related to Pikoli's handling of the TRC cases, although this complaint was later withdrawn. It nonetheless featured in the Ginwala Commission Report.

¹ In terms of Proclamation (No. 264 of 2025) the Commission was meant to conclude its work at the end of November and submit its report by the end of January 2026.



- 12.2 In 1995, Chairperson Khampepe was appointed by former President Mandela as a TRC Commissioner and in the following year she was appointed a member of the TRC's Amnesty Committee.
- 12.3 Between September 1998 and December 1999, Chairperson Khampepe was a Deputy National Director of Public Prosecutions. During this period, she apparently played a role on the Human Rights Investigation Unit (HRIU), established by then NDPP Bulelani Ngcuka to advise him on how to handle the cases referred by the NPA to the TRC.
13. 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.
14. We wish to echo the point made by Bruinders SC (for the President) at the meeting in chambers on Monday that a commission is not a court of law and should not be following strict court like procedure on every technical or procedural objection raised.
15. We respectfully state that a Commission is entitled to take robust steps to expedite its proceedings. If every technical point or objection becomes a mini court case requiring the exchange of papers with written and oral arguments, we fear that the Commission proceedings will be never-ending.
16. Yours faithfully

**WEBBER WENTZEL**

Asmita Thakor

Partner

Direct tel: +27 11 530 5875

Email: asmita.thakor@webberwentzel.com**Copied to the Parties**

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: _____

In the matter between:

LUKHANYO BRUCE MATTHEWS CALATA 1st Applicant

ALEGRIA KUTSAKA NYOKA 2nd Applicant

BONAKELE JACOBS 3rd Applicant

FATIEMA HARON-MASOET 4th Applicant

TRYPHINA NOMANDLOVU MOKGATLE 5th Applicant

KARL ANDREW WEBER CERTIFIED A TRUE COPY
OF THE ORIGINAL 6th Applicant

KIM TURNER TAYLA ILSLEY 7th Applicant

LYNDENE PAGE BA Law (UP) - LLB (UP)
Commissioner of Oaths
Ex Officio / Practising Attorney P.S.A
THE LEONARDO 8th Applicant

75 Maude Street, Office Level 12,
Sandown, SANDTON, 2196
(011) 784-3310
Mobile: +27 (0) 72 839 9229
Email: tayla@ianlevitt.co.za 9th Applicant

NEVILLE BELING 18/01/2025 10th Applicant

NOMBUYISELO MHLAULI  11th Applicant

SARAH BIBI LALL 12th Applicant

SIZAKELE ERNESTINA SIMELANE 13th Applicant

SINDISWA ELIZABETH MKONTO 14th Applicant

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STEPHANS MBUTI MABELANE	15th Applicant
THULI KUBHEKA	16th Applicant
HLEKANI EDITH RIKHOTSO	17th Applicant
TSHIDISO MOTASI	18th Applicant
NOMALI RITA GALELA	19th Applicant
PHUMEZA MANDISA HASHE	20th Applicant
MKHONTOWESIZWE GODOLOZI	21st Applicant
MOGAPI SOLOMON TLHAPI	22nd Applicant
FOUNDATION FOR HUMAN RIGHTS	23rd Applicant

and

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	1st Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	2nd Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	3rd Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	4th Respondent
MINISTER OF POLICE	5th Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	6th Respondent

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FOUNDING AFFIDAVIT

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I, the undersigned

LUKHANYO BRUCE MATTHEWS CALATA

do hereby make oath and state as follows:

INTRODUCTION

- 1 I am an adult male journalist, author and filmmaker born on 18 November 1981. I am currently employed as the Political Editor at Newzroom Afrika based in Johannesburg.
- 2 I am the son of the late Fort Calata who, along with Matthew Goniwe, Sicelo Mhlauli and Sparrow Mkonto, became known posthumously as the Cradock Four. On 27 June 1985 they were abducted, tortured, murdered and their bodies burned by the Security Branch of the erstwhile South African Police.
- 3 In bringing this application I also represent the interests of Nomonde Liza Calata, my mother and the widow of the late Fort Calata, as well as Dorothy Calata-Dombo and Tumani Pauline Calata, who are my sisters and the daughters of the late Fort Calata. I deal with standing and our interests in more detail later in this affidavit.
- 4 All the applicants in these proceedings have family members who laid down their lives for our freedom and democracy or are themselves survivors of gross human rights violations. They were murdered, forcibly disappeared or seriously injured. We have been denied justice and closure for the heinous crimes that were committed against us and our loved ones during apartheid due to the suppression of the investigations and prosecutions through political interference (the interference or the political interference).

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- 5 We bring this application to address, to the extent possible, the grave injustices caused by the interference. We seek to have our constitutional rights to dignity and justice, which were deeply violated by the interference, vindicated. We also seek the truth behind how such brazen interference in the administration of justice occurred to ensure that such injustices never happen again.
- 6 I am authorised to bring this application on behalf of the applicants. Confirmatory and supporting affidavits are filed evenly with this affidavit in respect of each of the applicants.
- 7 The facts deposed to in this affidavit are within my personal knowledge, unless otherwise stated or indicated by the context, and are true and correct to the best of my knowledge. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be correct. Where necessary, confirmatory or supporting affidavits deposed to by those persons with personal knowledge accompany this affidavit.

RELIEF SOUGHT

- 8 The relief sought by the applicants is summarised below. An order is sought:
 - 8.1 Declaring the conduct of the first to sixth respondents in unlawfully refraining and/or obstructing, the investigation and/or prosecution of apartheid-era cases referred by the Truth and Reconciliation Commission (TRC) to the National Prosecuting Authority (the NPA) (**the TRC cases**), or to otherwise unlawfully abandon or undermine such cases (**the interference**) to be:
 - 8.1.1 a violation of the rights of applicants, and more generally the rights of survivors and families of victims of apartheid-era crimes (**the**

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families) to their constitutional rights of human dignity and equality and the right to life and bodily integrity of the victims in terms of sections 9, 10, 11 and 12 of the Constitution, Act 108 of 1996 (**the Constitution**);

- 8.1.2 inconsistent with the constitutional values set out in section 1(a) and the rule of law as enshrined in section 1(c) of the Constitution;
- 8.1.3 inconsistent with the principles, values and obligations arising from the Promotion of National Unity and Reconciliation Act, 34 of 1995 (**the TRC Act**) read with the postscript to the Constitution of the Republic of South Africa Act 200 of 1993 (**the Interim Constitution**);
- 8.1.4 in breach of the duties and obligations contained in the Constitution, the National Prosecuting Authority Act, 32 of 1998 (**the NPA Act**) and the South African Police Service Act, 68 of 1995 (**the SAPS Act**) to investigate and prosecute serious crime and not to interfere with the legal duties of prosecutors and law enforcement officers; and
- 8.1.5 inconsistent with South Africa's international law obligations in terms of sections 231 to 233, read with section 39(b), of the Constitution.

8.2 The awarding of constitutional damages for purposes of affirming constitutional values, vindicating the rights of the applicants and families, deterring future interference and to enable families and organisations supporting families to:

- 8.2.1 advance truth, justice and closure by assisting them to pursue investigations, inquests, private prosecutions and related litigation;

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- 8.2.2 play a monitoring role in respect of the work of the policing and justice authorities charged with investigating and prosecuting the TRC cases; and
- 8.2.3 pursue commemoration, memorialisation and public education activities, including the holding of public events, publishing of books and making of documentaries.

- 8.3 The creation of an independent trust in accordance with the provisions of the Trust Property Control Act 57 of 1998 to hold and disburse any funds awarded as constitutional damages in furtherance of the objects set out above.

- 9 Declaring the failure and/or refusal by the second respondent (**the President**) to establish a commission of inquiry into the suppression of the investigation and prosecution of the TRC cases (**the decision**) to be:
 - 9.1 inconsistent with his constitutional responsibilities under section 84(2)(f) read with sections 1(c), 7(2), 83(b) and 237 of the Constitution, and
 - 9.2 a violation of the survivors and families of victims of apartheid-era crimes' right to equality, dignity and the right to life and bodily integrity of the victims in terms of sections 9, 10, 11 and 12 of the Constitution.

- 10 Reviewing and setting aside the President's failure and/or refusal to appoint a commission of inquiry as described above.

- 11 Directing the President to:

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11.1 promulgate in the Government Gazette, within thirty (30) calendar days of this order, the establishment of a commission of inquiry in terms of section 84(2)(f) of the Constitution, which commission of inquiry shall be headed by a sitting or retired judge designated by the Chief Justice, and shall be tasked to inquire into:

11.1.1 whether, why, and to what extent and by whom, efforts or attempts were made to influence or pressure members of the NPA and/or the South African Police Service (SAPS) to stop investigating and/or prosecuting the TRC cases;

11.1.2 whether any members of the NPA and/or the SAPS improperly colluded with such attempts to influence or pressure them; and

11.1.3 to make recommendations flowing from its conclusions, for actions to be taken by organs of state, including prosecutions to be instituted against persons found to have acted unlawfully in:

(a) attempting to influence or pressure members of the NPA and/or the SAPS to stop investigating and/or prosecuting the TRC cases, and/or

(b) colluding with or succumbing to such attempts;

11.2 to make the provisions of the Commissions Act 8 of 1947 applicable to the abovementioned commission of inquiry in the aforesaid proclamation in the Government Gazette.

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STRUCTURE OF AFFIDAVIT

12 The scheme of this affidavit necessitates me addressing the following topics:

- 12.1 First, I provide an overview of this application, and in particular I describe the fundamental betrayal committed by the post-apartheid state against families and victims connected to apartheid-era crimes.
- 12.2 Second, I describe the parties to the application.
- 12.3 Third, I set out the applicants' standing to pursue this application and the jurisdiction of this court to deal with these proceedings.
- 12.4 Fourth, I deal with the background to the political interference, including an overview of apartheid-era violations, the TRC process, early attempts to secure justice, post TRC developments and the dire lack of delivery in the TRC cases.
- 12.5 Fifth, I address the political interference in the TRC cases, starting with its genesis, the closing down of the cases, the various forms of interference employed, the moratorium imposed and direct interventions to stop the cases, as well as disclosures made in litigation.
- 12.6 Sixth, I turn to the question of whether the suppression of the TRC cases was the product of a political agreement, and I consider various interactions between senior government officials and former apartheid security personnel regarding an immunity and other arrangements aimed at avoiding prosecutions.

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12.7 Seventh, I deal with the post-interference developments, including the efforts to reopen inquests, and litigation the families launched to compel or prompt action on the part of the NPA and the South African Police Service (SAPS).

12.8 Eighth, I deal with calls for a specialised unit, such as an investigating directorate, where prosecutors and detectives could work together to tackle the TRC cases; as well as the response of the state declining this approach.

12.9 Ninth, I address the requests for an independent commission of inquiry into the suppression of the TRC cases, the plan by the former Minister of Justice to circumnavigate an independent and open inquiry, and the Ntsebeza inquiry launched by the NPA.

12.10 Tenth, I list the statutory and constitutional provisions that have been violated by the political interference that resulted in the suppression of most of the TRC cases.

12.11 Eleventh, I set out the grounds for the declaratory relief and constitutional damages sought, which includes the impact of the denial of justice on families and survivors, and the violation of the rule of law, various rights and international law obligations.

12.12 Twelfth, I explain the type and form of constitutional damages sought by the applicants and motivate the quantum claimed.

12.13 Thirteenth, I set out the grounds for the declaratory relief setting aside the President's refusal or failure to establish a commission of inquiry into the suppression of the TRC cases.

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12.14 Finally, I set out the grounds for the mandatory order sought compelling the President to establish an inquiry under the Commissions Act.

OVERVIEW

- 13 The state-sanctioned abduction, torture, murder of my father and the desecration of his body have had a profound effect on me and my family. The inhuman acts of brutality committed against the family members of my co-applicants, and certain of the applicants themselves, have had similarly devastating effects on them. Their stories are told in their supporting affidavits which accompany this application.
- 14 We had to endure the murders and disappearances of our family members during apartheid. The post-apartheid era of political interference and denial of justice stand as a deep betrayal of their ultimate sacrifices. The interference adds insult to our injuries and exacerbates our emotional and psychological trauma, as well as the pain and suffering we have endured.
- 15 We are at our wits' end as to why successive post-apartheid governments turned their backs, not only on us, but on our loved ones and so many others who paid the ultimate price for our freedom and democracy.
- 16 The evidence discloses that decisions were taken at the highest political levels to undermine, and ultimately to block the investigation and prosecution of the cases referred by the TRC to the NPA.
- 17 The story of the Cradock Four is well known and I will not burden these papers by repeating that story here. The full story, together with our quest for justice, is set out in the legal application I brought against the NPA in 2021 to compel a prosecutorial decision before the Gauteng Division in *Calata and Others vs National*

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Director of Public Prosecutions and Others Case Number: 35447/2021. A copy of these voluminous papers can be provided on request.

- 18 The brutal murders of our family members and the pain that we endure have defined us and our life choices. We have spent decades searching for the truth and struggling to do justice to the lives of our loved ones, which were so brutally cut short. We have done so in the face of the intransigence of the post-apartheid state, which has misled us and treated us with contempt.
- 19 For most of us, it is too late. Our life-long struggle for accountability has come to naught. Suspects and witnesses have died, bringing an end to any prospect of prosecutions in most cases. These cases can never be resurrected.
- 20 Family members have also passed on. On 29 August 2020, Nyameka Goniwe, wife of Matthew Goniwe, passed away. Matthew's daughter, Nobuzwe, died on 22 July 2024 at the age of 49. They died before seeing justice done in Matthew's brutal murder. The cruel indifference of the post-apartheid state robbed them of justice, peace and closure. The damage done to us, our families and communities is incalculable. We are deeply scarred and will remain so until our dying day.

The Betrayal

- 21 Families of apartheid-era victims have conducted themselves with resilience and remarkable patience.
- 22 We committed ourselves to the historic compromises that were required to move from South Africa's oppressive past to a democratic future. We participated in the TRC process (to be described below) in good faith. This involved having to accept

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that perpetrators granted amnesty would not face prosecution or civil damages claims.

23 There was a general expectation founded on the constitutional obligations of the post-apartheid state that the state would prosecute perpetrators who were not amnestied and provide victims with reparations. For this reason, we did not sue the new South African state for the transgressions of the apartheid state.

24 In this regard, according to the TRC Report (Volume 6, section 1 page 36), read with figures released by the Department of Justice (DOJ), of the 7112 persons who applied for amnesty (relating to more than 14 000 incidents), some 5034 were rejected on the papers (in chambers) for not meeting the basic requirements for amnesty, while the balance were referred to hearings before the Amnesty Committee. The DOJ's summary of amnesty decisions is annexed hereto marked **FA1**.

25 Some 849 of these applicants were granted amnesty while approximately 358 applications were refused. Murders comprised the biggest category of the crimes for which amnesty was refused, some 189 cases, which involved at least 353 deaths. An excel spreadsheet compiled by my legal team listing the details of each refusal, is annexed hereto marked **FA2**.

26 At that time, we felt it was fundamentally wrong to sue the democratic state in such a context. This was especially the case since state funds were meant to be used for reparations. We gave up our claims, and in so doing, we spared the post-apartheid state from having to pay a vast sum of money.

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27 However, the state reneged on both of its constitutional obligations in relation to the post-TRC process. It failed to prosecute and has provided wholly inadequate reparations. Its cruel and misguided "closed list policy" excluded many thousands of victims from the benefits of reparations. R2 billion in the President's Fund remains unspent. Successive post-apartheid governments have destroyed the social compact struck with us.

28 Had we known at the time the TRC was concluding its operations that the post-apartheid government had no intention of prosecuting those who had not received amnesty, most of us would have pursued civil claims against those perpetrators and the state, in cases where harm was committed by agents of the apartheid state.

29 The bulk of these claims would have been for loss of support since most cases in which amnesty was refused involved murders and enforced disappearances. Many of those killed by state agents were breadwinners. It would be difficult to quantify, but the potential amounts of such claims would have been substantial, probably running into hundreds of millions of rands. Such amounts would be even higher, if one includes the many cases involving perpetrators who committed murders in the course and scope of their employment with the apartheid state, but who did not apply for amnesty.

30 We approach this Honourable Court for constitutional damages, not to compensate us for what we have endured, but for purposes of vindicating the violation of our rights to human dignity and justice visited upon us by the political interference, and to deter future such violations. Such damages will enable us to pursue truth and justice in the cases where this is still possible; help us to monitor and hold to account the authorities going forward; and to commemorate the lives of our loved ones.

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- 31 For several years we have been asking for an independent and open commission of inquiry into the suppression of the TRC cases. President Ramaphosa and the former Minister of Justice, Ronald Lamola, have ignored our requests. The former Minister instead spoke of holding an internal enquiry, which is likely to be carefully stage managed and held largely behind closed doors to spare government the close scrutiny of an open inquiry.
- 32 We will accept nothing less than a fully transparent commission of inquiry armed with the normal powers of compulsion under the Commissions Act. For this reason, we seek an order compelling the President to establish an independent commission to expose the truth behind how such a monumental miscarriage of justice occurred; and to explore ways of ensuring this never happens again in South Africa.

THE PARTIES

The applicants

- 33 I am the first applicant. I am the son of the late Fort Calata, one of the Cradock Four. On 27 June 1985, the Cradock Four were abducted, assaulted, murdered and their bodies burned by the Security Branch (SB) of the erstwhile South African Police (SAP).
- 34 The second applicant is **ALEGRIA KUTSAKA NYOKA**, the sister of the late student activist and East Rand COSAS (Congress of South African Students) leader, Caiphus Nyoka. Caiphus was killed by members of the SAP Riot Unit and the Benoni SB at his family home in Daveyton on 24 August 1987. A copy of Alegria's supporting affidavit is filed evenly herewith.

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35 The third applicant is **BONAKELE JACOBS**, the brother of the late Mxolisi 'Dicky' Jacobs who died while in detention in Upington in 1986. A copy of his supporting affidavit is filed evenly herewith.

36 The fourth applicant is **FATIMA HARON-MASOET** the daughter of the late Imam Haron who was tortured and killed while in SB detention in Cape Town during 1969. A copy of her supporting affidavit is filed evenly herewith.

37 The fifth applicant is **TRYPHINA NOMANDLOVU MOKGATLE**, the eldest sister of the late Zandisile Musi, one of the COSAS Four, who was seriously injured in a bombing orchestrated by the SB on 15 February 1982 and who has subsequently passed away. A copy of Tryphina's supporting affidavit is filed evenly herewith.

38 The sixth applicant is **KARL WEBER**, a survivor of the Highgate Hotel Massacre in East London on 1 May 1993. A copy of his supporting affidavit is filed evenly herewith.

39 The seventh applicant is **KIM TURNER**, one of the daughters of the late academic and anti-apartheid activist Dr Richard 'Rick' Turner. Rick Turner was assassinated by the security forces on 8 January 1978 at his Durban home in the presence of his daughters. A copy of Kim's supporting affidavit is filed evenly herewith.

40 The eighth applicant is **LYNDENE PAGE**, the sister of the late Deon Harris, who was killed on 1 May 1993 in the Highgate Hotel Massacre. A copy of her supporting affidavit is filed evenly herewith.

41 The ninth applicant is **MBUSO KHOZA**, the son of Musawakhe 'Sbho' Phewa. Sbho was an underground Umkhonto we Sizwe (MK) operative from Lamontville,

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KwaZulu Natal. Sbho was forcefully disappeared and murdered at the hands of the SB in May 1987. A copy of Mbuso's supporting affidavit is filed evenly herewith.

- 42 The tenth applicant is **NEVILLE BELING** who survived the 1 May 1993 Highgate Hotel Massacre. A copy of his supporting affidavit is filed evenly herewith.
- 43 The eleventh applicant is **NOMBUYISELO MHLAULI**, an adult female former manager at the South African Social Security Agency and widow of Sicelo Mhlauli, one of the Cradock Four. A copy of her supporting affidavit is filed evenly herewith.
- 44 The twelfth applicant is **SARAH BIBI LALL** the sister of the late Dr Hoosen Haffejee who was tortured and killed at the Brighton Police Station in Durban in 1977. A copy of her supporting affidavit is filed evenly herewith.
- 45 The thirteenth applicant is **SIZAKELE ERNESTINA SIMELANE**, the mother of the late Nokuthula Simelane who was abducted, tortured and murdered by the SB in 1983. A copy of her supporting affidavit is filed evenly herewith.
- 46 The fourteenth applicant is **SINDISWA ELIZABETH MKONTO**, an adult female and former teacher at Masizame Creche in Lingelihle, and widow of Sparrow Thomas Mkonto, one of the Cradock Four. A copy of her supporting affidavit is filed evenly herewith.
- 47 The fifteenth applicant is **STEPHANS MBUTI MABELANE**, the brother of the late Matthews 'Mojo' Mabelane, who died in detention on 15 February 1977 while under interrogation by the SB at John Vorster Square. A copy of his supporting affidavit is filed evenly herewith.

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48 The sixteenth applicant is **THULI KUBHEKA**, the daughter of the late MK operative Ntombikayise Priscilla Kubheka who was abducted, tortured and murdered near Winklespruit by the SB in May 1987. A copy of her supporting affidavit is filed evenly herewith.

49 The seventeenth applicant is **HLEKANI EDITH RIKHOTSO**, the sister of Ignatius 'Iggy' Mthebule. Iggy, a former MK operative, disappeared at the hands of the SB in 1987 in Johannesburg. He was never seen again and is presumed to have been murdered. A copy of Hlekani's supporting affidavit is filed evenly herewith.

50 The eighteenth applicant **TSHIDISO MOTASI**, the son of the late Richard and Busisiwe Irene Motasi. Richard and Busisiwe were shot dead by the SB on 1 December 1987 at the family's Hammanskraal home, in Tshidiso's presence. A copy of Tshidiso's supporting affidavit is filed evenly herewith.

51 The sixteenth applicant is **NOMALI RITA GALELA**, the wife of the late Twasile Champion Galela, one of the Pebco 3. Champion was a member of the Port Elizabeth Black Civic Organisation who was kidnapped by the Port Elizabeth SB and the Vlakplaas unit on 8 May 1985 and murdered days later at Post Chalmers. A copy of Nomali's supporting affidavit is filed evenly herewith.

52 The twentieth applicant is **PHUMEZA MANDISA HASHE**, the daughter of the late Sipho Hashe, one of the Pebco 3. Sipho was kidnapped by the Port Elizabeth SB and the Vlakplaas unit on 8 May 1985 and murdered days later. A copy of Phumeza's supporting affidavit is filed evenly herewith.

53 The twenty-first applicant is **MKHONTOWESIZWE GODOLOZI**, the son of the late Qaqawuli Godolozi, one of the Pebco 3. Qaqawuli was kidnapped by the Port

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Elizabeth SB and Vlakplaas unit on 8 May 1985 and murdered days later. A copy of Mkhontowesizwe's supporting affidavit is filed evenly herewith.

54 The twenty-second applicant is **MOGAPI SOLOMON TLHAPI**, the brother of Nicholas Ramatua 'Boiki' Tlhapi. Boiki was forcefully disappeared from the Stilfontein police station while in the hands of the Security Police in March 1986 and is presumed to have been murdered. A copy of Mogapi's supporting affidavit is filed evenly herewith.

55 The twenty-third applicant is the **FOUNDATION FOR HUMAN RIGHTS (FHR)**, a non-governmental human rights organisation with its principal place of business at Metal Box Building, 7th Floor, 25 Owl Street cnr Stanley Avenue, Auckland Park, Johannesburg. The FHR was established in 1996 by then President of South Africa, Nelson Mandela, and the European Union to address the historical legacy of apartheid and build a culture of human rights. One of its major programmes is the Unfinished Business of the Truth and Reconciliation Commission which supports victims of apartheid-era to pursue justice and closure. A copy of the supporting affidavit of Dr Zaheed Kimmie, Executive Director of the FHR, is filed evenly herewith. A copy of the FHR's Memorandum of Incorporation is attached marked **FA3** and an extract from the minutes of a board meeting authorising the FHR's participation in these proceedings is attached marked **FA4**.

The respondents

56 The first respondent is the **GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA** with its offices located at the Union Buildings, Government Avenue, Pretoria.

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57 The second respondent is the **PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** cited in his official capacity. The President's office is located at the Union Buildings, Government Avenue, Pretoria.

58 The third respondent is the **MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT** cited in her official capacity, with her office located at the Momentum Centre, 329 Pretorius Street, Pretoria. The Minister of Justice is also cited in terms of section 179(6) of the Constitution, as the cabinet minister responsible for the NPA.

59 The fourth respondent is the **NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS** cited in her official capacity, with her office located at the VGM Building, Corner of Westlake and Hartley, 123 Westlake Avenue, Weavind Park, Silverton, Pretoria. The NDPP is cited in terms of section 179(1)(a) of the Constitution as the head of the NPA.

60 The fifth respondent is the **MINISTER OF POLICE** cited in his official capacity, with his office located at the Wachthuis Building, 231 Pretorius Street, Pretoria. The Minister of Police is cited in terms of section 206(1) of the Constitution as the cabinet minister responsible for the SAPS.

61 The sixth respondent is the **NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE** cited in his official capacity, with his office located on the corner of Park Street and Hamilton Street, Arcadia, Pretoria. The National Commissioner of the SAPS is cited as he is, in terms of section 207 of the Constitution, responsible for the control and management of the SAPS

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STANDING

62 The individual applicants being the first to twenty second applicants comprise survivors and families of the victims of the TRC cases.

63 The organisational applicant, being the Foundation for Human Rights, acts in the public interest.

64 This application is brought:

64.1 by me and the second to twenty second applicants acting:

64.1.1 in our own interest as survivors of apartheid-era crimes and family members of victims of apartheid-era crimes as contemplated in section 38(a) of the Constitution. We are directly impacted by such crimes and the subsequent interference that resulted in the blocking of post TRC investigations and prosecutions. Consequently, we have a direct interest in vindicating our rights which were violated by the interference;

64.1.2 in the interests of all survivors of apartheid-era crimes and the families belonging to the group or class of persons whose loved ones perished or were forcibly disappeared in apartheid-era crimes and whose cases were suppressed by the interference, in terms of section 38(c) of the Constitution; and

64.1.3 in the public interest in terms of section 38(d) of the Constitution.

64.2 by the FHR acting:

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64.2.1 in terms of s 38(a) of the Constitution since its interests, goals and activities are undermined and adversely affected by the interference;

64.2.2 in the interests of all survivors of apartheid-era crimes and the families belonging to the group or class of persons whose loved ones perished or were forcibly disappeared in apartheid-era crimes and whose cases were suppressed by the interference, in terms of section 38(c) of the Constitution; and

64.2.3 in the public interest in terms of s 38(d) of the Constitution.

65 In bringing this application, all applicants act in the public interest on the basis that the interference is objectively unconstitutional on the grounds set out in this application and, in particular, on the basis that it violated several rights enshrined in the Bill of Rights as well as the principles of the rule of law and the separation of powers.

66 In this regard it is asserted that:

66.1 The general public has an interest in the relief sought in this application, which arises from the principle of the rule of law which is the very fabric of our society.

66.2 Where fundamental rights are infringed, and the rule of law and separation of powers threatened, the interests of the general public are by definition implicated.

66.3 The most effective manner in which to challenge the offending conduct is for the applicants, in particular the institutional applicant, the FHR, which has a

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particular duty to advance these constitutional principles, to litigate in the public interest.

- 66.4 Many of the people affected by the challenged conduct are vulnerable people who have experienced the might of the state at its most brutal and some may not be in a position to bring a challenge of this nature.
- 66.5 Although it is not known with precision as to how many people are affected by the interference, it is likely that many would be directly or indirectly affected, since the TRC referred a few hundred cases to the NPA, and virtually all remain unresolved.
- 67 Rule 16A of the Rules of this Honourable Court will also be complied with in order to ensure that all affected persons will have an opportunity to present evidence and/or argument to the Court.

JURISDICTION

- 68 This Honourable Court has jurisdiction to determine this application as the respondents are located within the jurisdiction of this Honourable Court.

BACKGROUND TO THE POLITICAL INTERFERENCE

- 69 The context to the political interference in the TRC cases is set out below.

Apartheid violations

- 70 The Constitutional Court has held that the practice of apartheid constituted a crime against humanity. There is ample evidence in the public domain substantiating the conclusion that South Africa's pre-1994 order amounted to "an institutionalised

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regime of systematic oppression and domination by the white racial group over the black racial group" (which is the definition of the crime of apartheid in the Rome Statute). The TRC found that very serious crimes were committed during the apartheid-era. In particular, the TRC Report (Vol 5 Ch. 6, Findings and Conclusions, p 222) found that the security forces of the apartheid state committed a host of gross violations of human rights, including:

- 70.1 extra-judicial killings in the form of state-planned and executed assassinations, killings following abduction and interrogation, ambushes and entrapment killings;
- 70.2 the desecration and mutilation of body parts;
- 70.3 kidnappings and disappearances;
- 70.4 torture, severe ill treatment, abuse and harassment;
- 70.5 destruction of homes or offices through arson, bombings or sabotage;
- 70.6 manipulation of social divisions to turn one group against another, resulting, at times, in violent clashes; and
- 70.7 establishment and provision of support to offensive paramilitary units or hit squads for deployment internally against opponents of the government.

71 Tens of thousands of anti-apartheid activists were detained without charge or trial. Thousands of political activists were tried, convicted and imprisoned. According to South African History Online some 1,301 political prisoners served time on Robben Island. The total number of political prisoners held at all prisons runs into several thousands.

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72 The TRC concluded that under apartheid, the security forces were a law unto themselves. The vast majority of murders and crimes carried out by them were covered up.

73 We did not expect the apartheid police to investigate themselves or other security services. They acted entirely without restraint and without the slightest fear of having to face justice. Compliant investigating officers, prosecutors and magistrates ensured that apartheid security forces enjoyed near total impunity.

74 We did expect the post-apartheid state to pursue justice. However, a near blanket impunity for apartheid era crimes has been extended into the post-apartheid era, mainly through political interference, as is described below.

The TRC process

75 South Africa's ground-breaking transition required a limitation of the fundamental rights of the victims of gross human rights violations during that period. This was justified by the pressing need to promote national unity and reconciliation and to cross the historic bridge between the past of a deeply divided society to a future founded on democracy, equality and peaceful co-existence.

76 The principles set out in the postscript to the Interim Constitution were reflected in the design of the TRC Act. Perpetrators of politically motivated crimes who made full disclosure were eligible for amnesty for those crimes, which included immunity from criminal prosecution and civil law actions. Conversely, those perpetrators who were refused amnesty, or who chose not to apply for amnesty, were meant to face the consequences, namely criminal prosecution.

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77 In requiring victims and the wider community to forgo their rights to justice under the rule of law, the state made an effective compact with victims. This compact required the state to take all reasonable steps to prosecute deserving cases in respect of offenders who were not amnestied.

78 I am advised that there is nothing in the constitutional and statutory design of the TRC process which contemplated or authorised the extension of the rights of perpetrators to further leniency or indemnity from prosecution beyond the winding up of that commission.

79 The TRC's Final Report, released on 21 March 2003, stressed that amnesty should not be seen as promoting impunity. The TRC highlighted the imperative need for "*bold prosecution policy*" in those cases not amnestied to avoid any suggestion of impunity or of South Africa contravening its obligations in terms of international law (Vol 6, Ch1, p 593, para 24).

80 Most victims accepted the necessary and harsh compromises that had to be made to cross the historic bridge from apartheid to democracy. We did so on the basis that there would be a genuine follow-up of those offenders who spurned the process of truth and reconciliation and those who were refused amnesty. This part of South Africa's historic pledge with victims has not been kept. Contrary to this obligation, in the aftermath of the TRC, the state chose to abandon its obligations by blocking the TRC cases.

81 The political pressure described in this affidavit served to shape the approach or policy of the NPA and the SAPS in relation to the TRC cases, post the winding up of the TRC. This approach is evidenced by various steps aimed at ensuring political control over prosecutorial decisions dealing with these cases.

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Early attempts to secure justice

82 Early attempts to secure justice are disclosed in a memorandum dated 24 October 2006, authored by the first head of the NPA's Priority Crimes Litigation Unit, Adv Anton Ackermann SC (**Ackermann**). It was addressed to the then Deputy NDPP, Dr Silas Ramaite. The memorandum is attached as annex RCM12 (at p849) to an affidavit (at pp 796 – 879) filed by Adv Raymond Christopher Macadam (**Macadam**) in the Joao Rodrigues stay of prosecution case in *Rodrigues v NDPP & Others* Case No. 76755/18, Gauteng Division. A copy of the aforesaid Macadam affidavit is annexed hereto marked **FA5**. These early attempts to pursue justice are set out below:

- 82.1 After the closure of the Commission of Inquiry regarding the Prevention of Public Violence and Intimidation (**the Goldstone Commission**) in 1994 the evidence unearthed by that inquiry was referred to the Transvaal Attorney General, Dr J D'Oliveira. A team of detectives from the SAPS was seconded to his office to conduct the investigations (**the D'Oliveira unit**).
- 82.2 The D'Oliveira unit was divided into two groups. One focussed on offences committed by apartheid security force members led by Dr D'Oliveira and the other on offences committed by liberation movements and right-wing groups led by Deputy Attorney General Fick, who was supported by police officers Director Nel and Senior Superintendent Britz.
- 82.3 On 7 November 1996, Dr J D'Oliveira requested the National Commissioner of Police to instruct all his Provincial Commissioners to submit all unsolved criminal dockets dealing with the conflicts of the past to his office.



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83 In parallel with the work of the TRC there were attempts to address some apartheid-era crimes. In 1996 the D'Oliveira unit prosecuted former SB commander of Vlakplaas, Eugene de Kock (De Kock), on 121 charges including murder and multiple other offences.

83.1 In August 1996 De Kock was found guilty on 89 of the 121 charges against him, including six of murder. In October 1996 he was sentenced to two life sentences plus 212 years' imprisonment.

83.2 The conviction of De Kock should have opened the door to prosecutions of the entire hierarchy in the erstwhile SB of the SAP. This never materialised. To this day De Kock is widely seen as the 'fall guy' for what the trial judge referred to as the "*rotten system*" that permitted such crimes.

84 In a case connected to the De Kock prosecution, SB officers Peter McIntyre, Andries Venter, Jaques Else and Philip de Beer were charged in 1996 with the murder of Sweet Sambo, who died in police custody in 1991. Since the accused had previously been acquitted on other charges in connection with Sambo's death in 1994, they were acquitted.

85 In 1996 the D'Oliveira unit charged Jack Cronjé and Jaques Hechter of the Northern Transvaal SB with 27 counts of murder committed between 1986 and 1987. Both applied for amnesty, which were subsequently granted (Amnesty Decisions AC/99/0031 and AC/99/0030), bringing an end to that case.

86 In 1997, former Vlakplaas commander Dirk Coetze and four other Vlakplaas operatives were charged with the 1981 murder of lawyer and political activist Griffiths Mxenge in Durban. Coetze and two others were found guilty in May 1997

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but shortly thereafter received amnesty by the TRC (Amnesty Decision no AC/97/0041).

87 In 1998, Ferdi Barnard, an operative of the Civil Cooperation Bureau (**CCB**), a covert unit of the South African Defence Force (**SADF**) was convicted of the 1989 murder of anti-apartheid academic, David Webster, and the attempted murder of Dullah Omar. He was sentenced to life imprisonment and released on parole in 2019.

88 Between 1995 and 1997, the Investigation Task Unit (**ITU**), which had been established by the Police Ministry in 1994 to investigate hit squad activity in the KwaZulu Natal region was involved in the following matters:

88.1 The murder trial of former Defence Minister Magnus Malan, and most of the top hierarchy of the SADF, for the 1987 KwaMakutha massacre in which 13 women and children were shot dead under a secret military operation styled as 'Operation Marion'.

88.1.1 Notwithstanding an abundance of documentary and witness evidence, all the accused were acquitted in what was widely seen as a bungled prosecution by the then KwaZulu Natal Attorney General Timothy McNally (**McNally**).

88.1.2 In May 2024 the NPA in KwaZulu Natal was asked to consider preferring charges against a former senior military officer who was central to the planning and oversight of Operation Marion, but who had not applied for amnesty and was not previously charged. Substantial information and evidence were provided to the NPA, but nothing further has been heard.

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88.2 On 2 June 1996, the ITU submitted a docket to McNally seeking the prosecution of eight senior Inkatha Freedom Party (IFP), KwaZulu Police and Government officials, including a homeland cabinet minister on multiple murder charges. The docket was titled "*The case against persons involved in the establishment and perpetration of hit squad activity in Esikhaweni and surrounding areas.*" McNally declined to prosecute, and these cases were never taken forward, even after McNally's resignation. In March 2023 the docket was resubmitted to the NPA in KwaZulu Natal, but nothing further has been heard.

88.3 McNally declined to prosecute former IFP operative Philip Powel for possession of illegal firearms and refused to prosecute former KwaZulu Police Commissioner Roy During for obstructing the course of justice in relation to a large arms cache that had been hidden in the KwaZulu Legislative Assembly building.

88.4 The ITU secured seven murder convictions against ANC hit squad members, connected to the Self Defence Units in the Midlands region, particularly in the town of Richmond. On the closure of the ITU these cases were handed over to the National Investigation Task Unit. Later in the 1990s the Murder and Robbery Unit and the Investigation Directorate Organised Crime secured an additional 23 murder convictions against ANC members.

88.5 The ITU also investigated hit squads connected to the IFP's Self Protection Units but realizing that McNally would not act against the IFP, it abandoned this case, and the ITU closed in mid-1997.

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89 During the 1990s, post 1994, at least 30 ANC, UDF and UDM aligned persons were convicted of murder and other serious crimes, just in the KwaZulu Natal province.

89.1 This is gleaned from the list of convicted persons recommended for pardon under former President Thabo Mbeki's Special Dispensation for Political Pardons (to be dealt with below) which dealt mainly with convictions secured in the 1990s and thereafter for alleged political crimes.

89.2 The list, a copy of which can be made available on request, disclosed that 81 convicted persons were associated with the ANC, PAC and civic organisations. Eleven were Afrikaner Weerstandsbeweging (AWB) and Freedom Front Plus members and 21 were IFP members. Only five were connected to the former National Party or the SAP, (all five convicted of the attempted murder of the Rev. Frank Chikane, to be discussed below).

89.3 These numbers belie claims made by organisations such as AfriForum, and the ironically styled Foundation for Equality before the Law, that only former Apartheid regime personnel have been targeted in the post-apartheid era.

90 In 1997 Colonel Wouter Basson faced 67 charges, including 16 of murder and 24 of fraud, relating to his activities as head of the apartheid government's chemical and biological warfare programme from 1982 to 1992. In April 2002, Basson was acquitted by the Pretoria High Court following a failed attempt by the prosecution to have the presiding Judge recused on grounds of bias. In 2005, the Constitutional Court partly reversed this decision to acquit Basson, holding that crimes committed outside South Africa could be prosecuted within the domestic courts. However, these charges were not pursued.

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91 In 2002, two Ciskei Defence Force soldiers, Vakele Archiebald Mkosana and Mzamile Thomas Gonya were acquitted of murder and attempted murder charges for their role in the 1992 Bisho Massacre, with the court accepting their plea of self-defence. Also in 2002, Worcester riot unit member, Michael Luff, was acquitted of the 1985 murder of protestor William Dyasi.

92 The cases described above cannot be referred to as 'TRC cases' as they were pursued independently of the TRC around the same time of the TRC's operations. Notably, these cases took place before the imposition of the political interference.

93 Until the end of President Nelson Mandela's term there did not appear to be political opposition to justice for apartheid crimes. On the occasion of the tabling of the TRC Report in Parliament in February 1999, President Mandela stated that "*accountability does need to be established and where evidence exists of a serious crime, prosecution should be instituted within a fixed time frame.*"

94 The two specialised units, the ITU and the D'Oliveira unit, helped to pioneer the approach of prosecution led investigations in South Africa, with prosecutors and investigators working together as teams under one roof, with proven success. As will be seen below, such a specialised approach is desperately needed in relation to the TRC cases, but the government has ignored all pleas in recent years to adopt this model, resulting in the stagnation of most of the cases. A request to the Ministry of Justice to establish a dedicated court to focus on the TRC cases has also fallen on deaf ears.

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Post TRC developments

95 According to former TRC commissioners Adv Dumisa Ntsebeza SC (**Ntsebeza**) and Yasmin Sooka (**Sooka**), in October 1998, the TRC prepared a letter addressed to then National Director of Public Prosecutions, Bulelani Ngcuka (**Ngcuka**), which was accompanied by a list of cases which the Commission asked the NPA to investigate further with a view to prosecution. It is likely that the letter and list were transmitted to the NDPP on 27 or 28 October 1998, which was the date of the last full meeting of the Commission before it ceased its official activities. Unfortunately, a copy of the aforesaid letter and list cannot be located, but the NPA may have this correspondence on record. The confirmatory affidavits of Ntsebeza SC and Sooka are annexed hereto marked **FA6** and **FA7** respectively.

96 According to Ackermann, in 1998 the investigation dockets held by the D'Oliveira unit were transferred to the NPA.

96.1 In terms of a directive issued in 1999 by the then NDPP, the TRC related cases were transferred from the then Directorate of Special Operations (DSO), and from the various offices of the Directors of Public Prosecutions (DPPs) and the SAPS to the office of the NDPP.

96.2 A copy of Ackermann's affidavit dated 7 May 2015 (filed in support of Thembi Nkadimeng's application to compel a prosecutorial decision in the case of the murder of her sister, Nokuthula Simelane), is annexed hereto marked **FA8**. This application was brought in *Nkadimeng v NDPP and Others*, Gauteng Division under case no 35554/2015 (**Nkadimeng 2**). There was an earlier

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application in which Thembu Nkademeng was the lead applicant, which will be dealt with below.

97 In early 1999, a working group called the Human Rights Investigative Unit (HRIU) was established within the NPA by the then NDPP, Bulelani Ngcuka, on the initiative of the then Minister of Justice, Dullah Omar. The part-time head of the Unit was Adv Vincent Saldanha, and his deputy was former prosecutor, Adv Brink Ferreira. It was mandated to review, investigate and prosecute TRC cases in which perpetrators had been denied amnesty or in which perpetrators had not applied for amnesty.

98 During February 1999 a meeting took place between the TRC, represented by Commissioners Sooka and Ntsebeza, and the NPA. At this meeting, NDPP Bulelani Ngcuka introduced Adv Saldanha who had been appointed to lead the HRIU. The meeting discussed the process for identifying potential cases for prosecution.

99 On 8 or 9 March 1999, Sooka met with Adv Saldanha to discuss the report prepared by the TRC dated 7 March 1999 titled "Report for the Office of the National Director of Public Prosecutions," a copy of which is annexed hereto marked FA9.

99.1 This report indicated that the Commission had "*begun a process of establishing mechanisms for identifying potential cases.*" It added that the TRC had "*identified a range of categories and/ or issues around which we believe prosecutions can be considered*" and that there should be "*discussion around these categories to determine viability as well as prioritisation.*"

99.2 The report proposed categories and the types of gross human rights violations that should be investigated, including:

99.2.1 Torture;

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99.2.2 Post-Caprivi h't squads;

99.2.3 Security force cover-ups;

99.2.4 Unlawful destruction of documents;

99.2.5 Gun-running;

99.2.6 Target identification and assassinations;

99.2.7 Cross-border raids;

99.2.8 Recipients of section 30 notices and persons who were the subject of section 29 investigative enquiries; and

99.2.9 Amnesty applicants who were denied amnesty.

99.3 The report also referred to cases identified by regional offices and attached preliminary work-in-progress lists from the KwaZulu Natal, Eastern Cape and Western Cape regions, copies of which are annexed here to marked **FA10**, **FA11** and **FA12** respectively.

100 On 11 March 1999, Sooka sent a letter to Adv Saldanha seeking feedback on the report "*regarding potential prosecutions*" and undertaking to take steps to procure the information he requested. A copy of this letter is annexed hereto marked **FA13**. The TRC commenced referring cases for potential prosecution to the NPA and also alerted them to sources of possible evidence in relation to the crimes.

101 The HRIU continued operations until 2000, however it instituted no prosecutions. In 2000, the dockets held by the HRIU were transferred to the DSO, more widely known as the Scorpions. A working group was established within the DSO to handle

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the TRC cases known as the Special National Projects Unit (**SNPU**), which was headed by Macadam.

102 The NPA, per Adv CB Ferreira, addressed a letter dated 31 August 2000 (but date stamped 11 September 2000) to the TRC in relation to the cases that had been referred for further investigation. We are not in possession of this letter. However, the TRC's legal adviser and evidence leader, Adv PC Prior responded by way of an undated letter (presumably in September 2000) titled "*Human Rights Files and other Relevant Records*". In this letter Adv Prior acknowledged receipt of the NPA's letter and indicated that the TRC would respond in due course. Attached to Adv Prior's letter was a list of 226 TRC cases in table format. This list appears to have been compiled from the TRC Amnesty database. A copy of the letter and table are annexed hereto marked **FA14**.

103 Notwithstanding the above evidence confirming that various lists were handed over to the NPA by the TRC, on 17 September 2024, Adv Rodney de Kock, the Deputy NDPP, stated before a 'TRC matters update meeting' of the Justice and Constitutional Development Portfolio Committee that the NPA had gone through all available TRC information but stressed that no list of cases of perpetrators were referred to the NPA. A copy of the Parliamentary Monitoring Group summary of this meeting is annexed hereto marked **FA15**.

104 It appeared that the NPA devoted few resources to the SNPU. According to the author, Ole Bubenzer (**Bubenzer**) in his 2009 book, *Post-TRC Prosecutions in South Africa*, this was because the NPA was concerned that some cases would have to be withdrawn if amnesties were granted, since at that time the Amnesty Committee was still concluding its work. A copy of Bubenzer's confirmatory affidavit

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is annexed hereto marked **FA16**. A copy of Bubenzer's book can be supplied on request.

105 However, according to Bubenzer, there were many cases in which amnesty had already been denied or not applied for, such as the case against former SAP General Izak Johannes "Krappies" Engelbrecht, in which an indictment had apparently been prepared by the D'Oliveira Unit. In 2016, the SAPS responded to an access to information request for a copy of the Engelbrecht docket stating that "*it could not be found*". A copy of the request is annexed hereto marked **FA17**. By 1999 the D'Oliveira Unit had reportedly already prepared about 20 charge sheets. None of these charge sheets would see the light of day in a court.

106 The SNPU operated until 2003, but like the HRIU, it too instituted no prosecutions. On 24 March 2003, the Priority Crimes Litigation Unit (**PCLU**) was created within the NPA by Presidential Proclamation. Under the same proclamation, Ackermann was appointed to head the unit. Macadam was transferred from the DSO to become the Deputy Director at the PCLU. Part of the PCLU's mandate was to deal with the TRC cases.

107 In May 2003, NDPP Ngcuka decided that all TRC-related cases in which amnesty had not been granted were '*priority crimes*' in terms of the PCLU proclamation. According to Ackermann, this resulted in more than 400 investigation dockets being transferred to the PCLU. Official duties commenced during July 2003.

108 According to the NPA's Annual report 2002/2003, the PCLU instituted an audit of all available cases and registered some 459 cases that were handed over from the TRC, the D'Oliveira Unit and DPP offices. About 160 cases were excluded from

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further consideration. Sixteen cases were prioritised for prosecution, of which three were prepared almost immediately for indictment.

109 Macadam, in his affidavit filed in the Rodrigues stay of prosecution case, recorded the steps he and Ackermann took to identify which of the TRC cases required attention:

109.1 All the DPPs were visited and invited to hand over TRC cases which they were not in a position to finalise themselves.

109.2 A meeting was held with the Divisional Head of the Detective Services of the SAPS who issued an instruction to his Provincial Heads to refer all outstanding TRC dockets to the PCLU.

109.3 Two former TRC researchers were appointed to trawl the TRC archives in order to identify cases warranting attention.

109.4 Interviews were conducted with former members of the TRC and the D'Oliveira unit.

109.5 Ackermann and Macadam also entertained requests for investigations from victims and other members of civil society. This resulted in other cases being brought to their attention, including the Ahmed Timol matter.

110 The NDPP reported in a document titled "About PCLU" released on 23 March 2003 that the NPA is attending to the cases of some 500 persons who had been reported missing by the TRC. A copy of this document is annexed hereto marked FA18. A small Task Team evaluated the TRC Report to identify cases for investigation.

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According to the NDPP's report approximately 150 cases were identified for immediate investigation.

111 However, before the PCLU could get going, the political interference intervened which prevented the unit from carrying out its mandate in respect of the TRC cases. The few cases the staff managed to get off the ground were the ones that had been previously investigated with largely complete dockets. As will be set out below it became difficult, if not impossible, for the unit to build new cases.

Lack of delivery

112 The NPA has been in possession of various lists of TRC cases from 1998. In 2003, the TRC cases were declared priority crimes by the then NDPP. Accordingly, it may be asked what the NPA and SAPS have delivered in the last 20 to 25 years. The record is a pitiful one.

113 In order not to unduly burden these papers the correspondence and underlying documentation referred to in this section have not been annexed but can be supplied on request.

114 Bubenzer noted that while "*the D'Oliveira Unit of the 1990s constituted a well-equipped team of experienced prosecutors and investigators with strong political support, support for TRC-related prosecutions after 1998 declined drastically.*" Indeed, as will be seen below not only was political support withdrawn and the PCLU denied investigators, but withering political interference was to obstruct the cases from proceeding.

115 We are only aware of the following post-TRC developments in respect of matters that have been launched or concluded in court:

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115.1 *S v Khwezi Ngoma and Others*, which involved four APLA cadres who attacked the Willowvale police station in 1994 resulting in the death of a policeman. The accused did not apply for amnesty. They made representation through their attorneys requesting a withdrawal of the charges, but it was rejected, and they entered into plea agreements and received suspended sentences.

115.2 In 2003, the late Eugene Terre' Blanche, former leader of the Afrikaner Weerstandsbeweging, (Afrikaner Resistance Movement), who had been charged with various acts of terrorism under the Internal Security Act entered into a plea agreement and was given a wholly suspended sentence.

115.3 In 2004, former SB officers Gideon Nieuwoudt, Johannes Martin van Zyl, and Johannes Koole were charged with the 1985 kidnapping and murder of three leading anti-apartheid activists, known as the PEBCO 3. This was the first and only case that the PCLU brought in respect of perpetrators who had been denied amnesty.

115.3.1 Nieuwoudt and van Zyl applied to court to review the decisions to refuse them amnesty. The review was delayed by some five years because of the failure or refusal of the DOJ to file answering papers. Nieuwoudt died in August 2005.

115.3.2 In 2009 the High Court ruled that an Amnesty Committee be convened to rehear the application of Van Zyl. Charges were then provisionally withdrawn against Van Zyl and Koole. Inexplicably, the DOJ never convened an Amnesty Committee and the NPA

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never reinstated the cases against Van Zyl and Koole, who have both since died.

115.3.3 To date no steps have been taken against the surviving suspects, notwithstanding the urging of family members over many years. Only two remain alive, former Vlakplaas members Gerhardus Cornelius Beeslaar, who is nearly 87 years old and Joseph Tshepo Mamasela who is in his 70s.

115.4 In 2005, Buyile Roni Blani, an ANC supporter, who had been charged in 1985 for his role in the mob killing of two people, but who had fled the country, entered into a plea and sentence agreement and was sentenced to five years imprisonment, four of which were suspended.

115.5 *S v Aron Tyani & Another*, which related to the murder of Stembele Zokwe, an MK cadre, in 1988 by the Transkei Security Police. The accused were convicted and sentenced to terms of imprisonment in 2005.

115.6 During 2007, and in defiance of political instructions, the PCLU went ahead with an attempted murder case against former Police Minister, Adriaan Vlok, former Commissioner of Police, General Johann van der Merwe, Major-General Christoffel Smith, Colonels Gert Otto and Johannes 'Manie' van Staden for the 1989 poisoning of Rev. Frank Chikane. On 17 August 2007, this resulted in a plea and sentence agreement being confirmed with wholly suspended sentences. This was one of the factors that precipitated the suspension of the then NDPP, Adv Vusumzi Patrick Pikoli (Pikoli), on 23 September 2007, as well as the removal of Ackermann from involvement in the TRC cases.

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115.7 In 2015, following the filing of a High Court application by Thembi Nkadimeng to compel a prosecutorial decision in *Nkadimeng 2*, an indictment was issued in 2016 against four former SB members for the kidnapping and the murder of MK operative, Nokuthula Simelane. Two of the accused have since died and one, Willem Helm Johannes Coetze, claims to be mentally unfit to stand trial. Coetze's trialability inquiry has been ongoing for more than two years and holding up the trial, some eight years after the indictment was issued.

115.8 Between 2017 and 2023 five apartheid-era inquests were reopened, four of which were at the instance and pressing of the families. These were the inquests into the deaths in SB detention of Ahmed Timol, Neil Aggett, Hoosen Haffejee and Imam Haron. In all these cases, the families' legal representatives had to threaten the NPA and/or the Minister of Justice with legal action in order to get the inquests reopened. Correspondence in this regard can be supplied on request. The inquest courts in all four cases recommended that the NPA pursue perjury and other charges against several former SB officers. To date, with the exception of the late Jao Rodrigues, none have been charged.

115.9 Following the reopened inquest into the death of Ahmed Timol in 2017, which had been spearheaded by the Timol family and their representatives, former police officer Jao Rodrigues was charged with murder in 2018. Rodrigues died in September 2021 before he could stand trial.

115.10 In 2020 family members of the COSAS 4 filed an application with the Krugersdorp Magistrate's Court seeking an order for the disinterment and

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forensic examination of the bodies. This prompted the NPA to act and in 2021 kidnapping and murder charges were preferred against two former SB and Vlakplaas members.

115.10.1 Crimes against humanity charges were subsequently added to the indictment, the very first time that such charges had been pursued in South Africa. Various challenges, as well Stalingrad type parallel civil litigation launched by the accused, have delayed the start of the trial. In 2022, at the prompting and intervention by the families, the High Court ordered the SAPS to pay the reasonable legal costs of accused no. 2, Christiaan Rorich.

115.10.2 The application by accused no. 1, Tlhomedi Ephrahim Mfalapitsa, to overturn the refusal to grant him amnesty was dismissed by Judge Stuart Wilson on 11 November 2024. Between 18 and 21 November 2024 the trial court heard the objection of the accused to the crimes against humanity charges. Judgment was reserved and the trial was postponed to 14 April 2025.

115.11 In July 2023 the inquest proceedings into the 1982 death in detention of Ernest Moabi Dipale at John Vorster Square were concluded. The court found that Dipale did not commit suicide, but that the SB was responsible for his death. The court identified SB officers Nicholas Johannes Deetlefs and Joe Mamasela as key suspects whose involvement should be further investigated. Deetlefs died in September 2023.

115.12 In August 2022 murder charges were preferred against three former police officers, Johan Marais, Leon Louis Van Den Berg and Abram Hercules

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Engelbrecht, for the 1987 murder of student activist, Caiphus Nyoka. This followed a long struggle by the Nyoka family for justice.

115.12.1 On 9 October 2020, the family's attorneys, Webber Wentzel, placed the Deputy NDPP and the Head of the SAPS' Directorate for Priority Crimes Investigation (DPCI) on terms, demanding that the DPCI finalise its investigations and the NPA make a prosecutorial decision, failing which the High Court would be approached for an appropriate order.

115.12.2 A fourth police officer, Pieter Egbert Stander, was indicted in 2024. One of the accused, Johan Marais, pleaded guilty on 12 November 2024. The remaining three co-accused appeared before the Gauteng High Court sitting at Benoni at the start of the trial on 18 November 2024. The trial was postponed to 2 December 2024 when one of the accused terminated his counsel's brief.

115.12.3 On 5 December 2024, Judge Mahomed Ismail ruled that evidence led at the 1988 inquest (GO 112/1988) was "provisionally admissible", holding that not allowing the state to lead that evidence would be "tantamount to suppressing crucial and vital evidence."

115.12.4 The trial was postponed to 12 May 2025.

115.13 In November 2023, former "A" team gang member Wesley Madonsela was sentenced by the Durban Regional Court to 10 years imprisonment for



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murdering 17-year-old United Democratic Front activist Siphelele Nxumalo in 1989.

115.14 In relation to the 1987 enforced disappearances of Ntombikayise Kubheka and Musawakhe "Sbho" Phewa an inquest was opened during 2022 but did not proceed; and in November 2023 the DPP KwaZulu-Natal decided to pursue a prosecution of four persons: Hendrik Johannes Petrus Botha, Salmon Johannes Gerhardus Du Preez, Martinus Dawid Ras Jnr and Jakob Albert Coetzer. On 12 November 2024, Lawrence Gerald Wasserman was also charged with murder and all five accused appeared before the Umlazi Magistrate's Court, when the matter was postponed 28 January 2025. Four days later, it was reported that Wasserman had died while traveling on a plane between Durban and Johannesburg on 16 November 2024.

115.15 In January 2024, the NPA indicted four former SB officers for the 1985 murder of Jameson Ngoloyi Mngomezulu. The officers indicted are: Gerhardus Stephanus Schoon, Paul Jacobus van Dyk, Frederick Johannes Louw and Douw Gerbrandt Willemse. No further developments have been released by the NPA, and this case also appears to have stalled.

115.16 In May 2024, then Justice Minister, Ronald Lamola, authorised the reopening of the inquests into the deaths of Chief Albert Luthuli, Griffiths Mxenge and Booi Mantyi, but there appear to be no further developments in these matters. A statement released by the ANC dated 19 October 2024

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appeared to indicate that a judge had been appointed to preside over the Mxenge inquest before the KwaZulu Natal High Court.

115.17 In 2023, the NPA indicated to the legal representatives for the families and survivors of the 1993 Highgate Massacre that an inquest will be held. The inquest is set down for hearing from 27 January to 7 February 2025 at the High Court in East London.

115.18 On 1 March 2024, the NPA advised the lawyers for the Turner family that they had requested the Minister of Justice to reopen the inquest into the 1978 murder of Dr Rick Turner in Durban. However, since then all efforts to secure dates for the inquest and a progress report on the investigation have proved fruitless.

115.19 On 7 November 2024, the NPA confirmed in writing that the Minister of Justice had approved the reopening of the inquest into the death of Ramatua Nicholas "Boiki" Tlhapi. In March 1986, Tlhapi, an activist from Ikageng near Potchefstroom, disappeared from the Jouberton police station, while in a seriously injured state and was never seen again. On 13 December 2024, the Minister of Justice requested the Judge President of the North-West Division to designate a judge to preside over the reopened inquest.

116 The record of delivery is dismal. It amounts to five concluded reopened inquests (between 2017 and 2023), four plea and sentence agreements (all occurred between 16 and 21 years ago) and two concluded criminal trials, one some 18 years ago of Transkei police officials, and the other in 2023 resulting in the conviction and imprisonment of a gang member. There are only five criminal cases before the

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courts and all have been the subject of delays, in one matter, for some eight years. In the Nyoka matter, one of the accused has entered a guilty plea. The NPA has released different figures in relation to pending court cases and closed cases, but to date it has not disclosed the names of these cases.

117 According to a presentation made by the NPA to the Portfolio Committee on Justice and Constitutional Development on 17 September 2024, 30 matters had been finalised, but the NPA only disclosed the finalised Aggett, Dipale, Haffejee and Haron inquests. It also made reference to the finalised inquest of Zama Sokhulu, without providing any details.

117.1 In relation to 'matters on the criminal roll' the presentation referred to the COSAS 4, Nokuthula Simelane and Nyoka cases, as well as *S v Botha and Others* (connected to the Khubeka case) and *S v Schoon and Others* (connected to the Mngomezulu case) which were both remanded to November 2024 and described cryptically as "state attorney - legal representation". Under the heading of "Indictments" the NPA refers to three unnamed "*indictments to be served pending verification of addresses of perpetrators*".

117.2 Under the heading 'Notable Inquests' 15 matters are mentioned, but most appear to be stalled. In six cases, judges have apparently not been appointed, five are described as "*shortage of capacity*". One (Cradock 4) was described as a "*challenge with representation*". Only the Mthunsi Njakazi inquest had commenced, while the Oupa Madondo and Highgate Hotel cases were scheduled for November 2024 and January 2025 respectively. The presentation also claimed that memoranda for 10

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**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**

**EVIDENCE LEADER'S SUBMISSION TO THE OBJECTION TO WITNESSES
BEING LED BY THEIR LEGAL REPRESENTATIVES TO PRESENT THEIR
EVIDENCE**

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INTRODUCTION

1. At the pre-hearing meeting held on 27 October 2025, an objection was raised by certain parties against permission granted to the witnesses represented by Webber Wentzel, that their counsel will be allowed to lead the evidence of certain witnesses who are to appear before the Commission.
2. The Chairperson of the Commission made a ruling that the objectors will argue the objection before the Commission on 10 November 2025 as a preliminary point.
3. The parties were also ordered to file their objections on or before 5 November 2025 and submissions by 7 November 2025.
4. The purpose of these submissions is to deal with the objections.

APPROACH

5. In these submissions, we will deal with the following:
 - 5.1 Salient facts
 - 5.2 The objections that deal with the following
 - 5.2.1 Procedural unfairness;
 - 5.2.2 Authority to grant permission to Webber Wentzel to lead witnesses; and

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5.2.3 Process followed.

5.3 We will first deal with the relevant Rules of the Commission relating to presentation of the evidence of witnesses to the Commission.

5.4 We will then deal with the pertinent legal principles which should be applied in interpreting the Rules.

5.5 We will then deal with our submissions.

5.6 Conclusion.

SALIENT FACTS

6. The law firm acting on behalf of the Calata applicants in the Calata High Court matter requested that they be allowed to lead the evidence of certain witnesses that they represent.
7. On 11 August 2025, Webber Wentzel wrote a letter requesting that they be granted permission to lead certain witnesses and cross-examine others, subject to the Commission's directions. A copy of the letter is attached, marked "A"
8. The Chief Evidence Leader agreed to this proposal, and this was confirmed by Webber Wentzel in a letter dated 29 September 2025. A copy of this letter is attached, marked "B."

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9. On 25 September 2025, Webber Wentzel sent a letter to the Secretary of the Commission attaching a number of documents, including a document called "**Availability of statements for November hearing**". In that document, Webber Wentzel stated that they will be happy to lead the evidence of their clients and that they had given affidavits in previous applications. The witness statements were attached as a link to the document. A copy of the letter is attached, marked "C." This letter was sent to the legal representatives of the interested parties on 25 September 2025.
10. The Evidence Leaders were under the impression that since the letters were on SharePoint that they would have been accessible to all interested parties. On 27 October 2025, during the prehearing, it became clear that not everyone had access to SharePoint, and it was decided that all the documents on SharePoint should be loaded onto the website.
11. It took several days to have the technical service providers employed by the Commission to upload all the documents on SharePoint to the website successfully.
12. At the second pre-hearing meeting on 27 October 2025, at which all parties who had expressed interest in the Commission and the legal representatives of some of them were present. The further conduct of the proceedings of the Commission, including the leading of witnesses, was discussed.
13. The Chief Evidence Leader advised the parties that the first set of witnesses to be called will be led in their evidence by Advocate Varney. It bears

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mentioning that these witnesses have deposed to affidavits in the High Court in various matters, including in the matter of **Calata and others vs the Government and the Republic of South Africa and others under case number 2025/5245.**

14. It was at this point of the pre-hearing that the legal representatives of certain parties said that they were unaware of this arrangement. The matter was debated at some length, but the parties were not agreeable to the arrangement and raised objections.
15. The Chairperson of the Commission was consulted telephonically and ruled that the objections should be dealt with at the commencement of the Commission proceedings on 10 November 2025, as a preliminary point.
16. The objecting parties have since filed their objections and some have filed written submissions.
17. We will summarise the objections and deal with them at the same time. We will list them in no order of preference but simply for convenience.

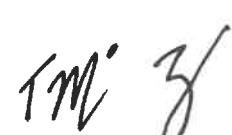
AD OBJECTION 1 (BOQWANA BURNS ATTORNEYS ON BEHALF OF THEIR CLIENTS)

18. The objector infers the phrase “primary responsibility” as the obligation resting on the Evidence Leader to place evidence before the Commission. The word “primary” does not exist in Rule 3.1 of the Rules of the Commission. The objector does not explain where that word comes from, nor why it should be

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inserted in Rule 3.1. The phrase in the Rules is “**overall responsibility**” of Evidence Leader which is to place the evidence before the Commission. Nothing in Rule 3.1 places the obligation on the Evidence Leader as “primary responsibility.”

19. The argument that there is a primary responsibility for the Evidence Leaders to lead all evidence is not even borne out by other Commissions’ processes. We cite two examples: in the Marikana Commission, as an example, the evidence of Mr Ramaphosa then was presented by Adv. David Unterhalter SC after Farlam J invited him to do so. See [\[https://www.youtube.com/live/OwfdiZL3cD4?si=wxiIpNdpqJWz8X5S1\]](https://www.youtube.com/live/OwfdiZL3cD4?si=wxiIpNdpqJWz8X5S1). The same obtained in the Usindiso Commission, where MNS Attorneys, acting for the City of Johannesburg and one of their attorneys led the City of Johannesburg witnesses. At that point, nobody raised an objection against allowing the leading of witnesses by legal representatives.
20. The argument therefore that there is a procedure which requires firstly that there should be a request for anyone to make a written application for them to use their own legal representatives to present their own evidence is without substance. The other leg to that argument is that a Chairperson of a Commission must first obtain possible objections from other parties is not sound. No precedent prevents an obligation for the Chairperson to give permission for a Commission to authorize a witness to use its own legal representative.

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AD OBJECTION 2 (STATE ATTORNEY ON BEHALF OF SAPS)

21. SAPS raises an objection that "*in order to maintain transparency, objectivity and fairness, all witnesses of the Commission ought to be treated the same, consulted upon with the evidence leaders and their evidence being presented with the assistance of the evidence leaders*". Nothing of this objection is contested. The real enquiry is whether any party is being precluded from presenting their evidence as best as they think they should. From the evidence leaders no such hinderance is presented.
22. The Rules place the overall responsibility of placing the evidence before the Commission on the Evidence Leader. They do not prescribe how that responsibility should be carried out, nor do they preclude any witness from being led by their chosen legal representative. Other commissions have allowed witnesses to be led by their own legal representatives.
23. There is nothing unfair or prejudicial for any witnesses' evidence to be presented to the Commission through their own legal representatives. No such prejudice has been presented that the Calata witnesses must be presented by their own legal representatives. The Evidence Leader retains the prerogative to put any question to any witness in order to assist the Commission in making factual findings and recommendations.
24. The Commission is committed to transparency and where procedural issues have an impact on the parties, the Commission will ensure that all parties are brought on board.

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25. All the correspondence of the Commission, as well as the minutes, are now on the website.

AD OBJECTION 3 (STATE ATTORNEY ON BEHALF OF THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

26. The Minister's objection is that "*the Chief Evidence Leader engaged in private discussions with counsel representing other parties and thereafter permitted their counsel to lead evidence on behalf of the Commission that this was procedurally unfair and inconsistent with the duty of impartiality imposed upon evidence leaders*".

27. The Rules place the overall responsibility of placing the evidence before the Commission on the Evidence Leader. They do not prescribe how that responsibility should be carried out, nor do they preclude any witness from being led by their chosen legal representative

28. The chosen legal representative in carrying out the overall responsibility of leading the evidence and allowing witnesses to be led by their own legal representatives does not in any manner prejudice or unfairly affect the procedural rights of anyone, and neither is it inconsistent with the duty of impartiality imposed upon Evidence Leaders.

29. The argument proffered that there is a procedure, that says that there must be a written request for any witness to request the Chairperson for them to present their evidence thorough their chosen legal representatives; that other

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parties must be invited to present whatever objection they have to that request and it must be presented to the Chairperson and that the Chairperson must rule on it, and is not contemplated in Rule 3.1 of the Rules of the Commission

30. The complaint that the letter by the Chairperson of 19 September 2025 that Adv Semenza SC will not deal with the NPA's prosecution policy was contravened is misguided, because it had nothing to do with whether or not external counsel can lead their witnesses. Rule 3.1 deals with the aspect of presentation of evidence and does not prohibit the leading of witnesses by their chosen legal representatives.
31. Another complaint is that there was no notice to, or participation by the Minister and other parties in the decision-making process concerning who may lead the Commission's witnesses and that this undermines the fairness of the commission's proceedings. The Rules do not provide for any notice or participation by other parties in the decision of who may lead any witness.
32. There is no perception, as alleged, of unequal treatment between parties before the Commission. All parties are treated fairly, transparently and with impartiality.
33. The objector also raises the complaint that they have a right of a fair hearing which will be compromised if Adv Varney SC leads the Commission's witnesses. The complaint is unfounded.

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AD OBJECTION 4 (STATE ATTORNEY ON BEHALF OF NPA)

34. The objector says that "*the objection concerns the lawfulness and propriety of the process by which the request by Adv Varney SC and Webber Wentzel to lead witnesses was granted, including (i) the identity of the decisionmaker, (ii) whether the chairperson was consulted or gave approval, (iii) whether the process complied with the Commission's Rules (specifically Rule 3.1) and (iv) whether affected parties were afforded notice and an opportunity to be heard before the decision was taken*".

35. The Chief Evidence Leader agreed with Adv Varney SC that they are permitted to lead their evidence in the manner proposed and that was in accordance with Rule 3.1 of the Rules of the Commission. No process complained about was followed. There is no provision in the Rules that any decision made to allow legal representatives to lead their witnesses should be communicated to all parties and the right of any party to object or not is addressed in Rule 3.1 of the Commission's Rules.

36. The Chairperson, in response to a proposal made by Webber Wentzel, that another evidence leader other than Adv Semenya SC should deal with the aspect of the prosecution policy, has nothing to do with the arrangement with Webber Wentzel lead Counsel, that the latter will lead evidence of his own clients during the public hearings

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THE RELEVANT RULES

37. The relevant rule is Rule 3 of the Rules of the Commission published under Government Gazette No. 53251 of 29 August 2025.

38. Rule 3 deals with witnesses presented by the Commission's Evidence Leader.

39. Rule 3.1 provides as follows:

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

40. Rule 3.2 provides that:

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

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THE PROPER APPROACH TO INTERPRETATION

41. The leading decision on the approach to the proper approach to interpretation is **Natal Joint Municipal Pension Fund v Endumeni Municipality**.¹

42. The Supreme Court of Appeal in **Natal Joint** observed that over the century there have been significant developments in the law relating to the interpretation of documents, both in this country and others that follow similar rules to our own.² The present state of the law can be expressed as follows:

"Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence."³

43. Whatever the nature of the document, consideration must be given to language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed; and the material known to those responsible for its production.⁴

¹ 2012 (4) SA 593 (SCA).

² Paragraph [18].

³ Paragraph [18].

⁴ Paragraph [18].

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44. The decision of **Natal Joint** was endorsed by the Constitutional Court in **University of Johannesburg v Auckland Park Theological Seminary and Another**.⁵
45. The Constitutional Court in **University of Johannesburg** held that the approach in **Endumeni** “updated” the previous position, which was that context would be resorted to if there was ambiguity or lack of clarity in the text.⁶
46. The Supreme Court of Appeal has explicitly pointed out in cases subsequent to **Endumeni** that context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous.⁷
47. Interpretation is to be approached holistically: simultaneously considering the text, context and purpose.⁸

SUBMISSIONS

48. In the context of Rule 3(1) and having regard to the ordinary rules of grammar and syntax, the rule simply says that the Evidence Leader bears the overall responsibility (own emphasis) to present the evidence of witnesses to the Commission.

⁵ [2021] ZACC13 at paragraphs [64], [65] and [66].

⁶ Paragraph [66].

⁷ Paragraph [66].

⁸ Paragraph [65].

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49. The rule certainly does not say that the Commission's Evidence Leader exclusively must present the evidence of witnesses to the Commission. It simply places the overall responsibility on the Evidence Leader.
50. The rule certainly leaves it open to the Evidence Leader to decide how the overall responsibility is carried out. The word "overall" is defined in the Cambridge Dictionary as: "*in general, rather than in particular, or including all the people or things in a particular group or situation*".
51. The rule certainly does not prescribe how the overall responsibility is to be carried out. That remains within the ambit or the functions of the Evidence Leader, subject to the rules or the Chairperson's directions.
52. As regards context in which the rule appears, this is amongst others the Constitution of the Republic of South Africa, the Commissions Act⁹, the Regulations and the Rules themselves. This is the legal context in which the rules must be interpreted.
53. In the first place, as far as the Constitution is concerned, commissions of inquiry are appointed by the President in terms of section 84(2)(f).
54. In the Commissions Act, the preamble records that the Act is meant to make provision for conferring of certain powers on commissions appointed for the purpose of investigating matters of public concern, and to provide for matters incidental thereto. Whenever a commission is appointed for the purpose of

⁹ Act 8 of 1947.

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investigating a matter of public concern, the President may by proclamation in the Gazette:

54.1 declare the provisions of the Act or any other law to be applicable with reference to such commission, subject to such modifications and exceptions as the President may specify in such proclamation;¹⁰

54.2 make regulations with reference to such commission –

54.2.1 conferring additional powers on the commission;¹¹

54.2.2 providing for the manner of holding or the procedure to be followed at the investigation or for the preservation of secrecy;¹²

54.2.3 providing generally for all matters which he considers it necessary or expedient to prescribe for the purposes of the investigation.¹³

55. The President declared the provisions of the Commissions Act applicable to the Commission.

56. Regulation 14 gives the Commission the power to determine its own procedures.

¹⁰ Section 1(a).

¹¹ Section 1(b)(i).

¹² Section 1(b)(ii).

¹³ Section 1(b)(iv).

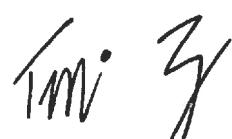
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57. Nothing in the Act, Regulations or Rules prescribes that the Evidence Leader shall exclusively present the evidence of witnesses to the Commission.
58. As far as the apparent purpose to which the Rules are directed, this is to assist the work of the Commission, so that the evidence is presented before the Commissioners for them to reach their recommendations.
59. Those responsible for the production of the Rule would know the exigencies which attend such a task as running a Commission. One of the considerations is that the time period within which the Commission must execute its functions are limited.
60. It is also known that the Commission of Inquiry is not adversarial, but inquisitorial. The Evidence Leader carries the overall responsibility to present the evidence; but it may be convenient depending on the exigencies to allow other parties to present the evidence of witnesses, under the overall responsibility of the Evidence Leader.
61. **Endumeni** also instructs that where more than one meaning is possible, each possibility must be weighed in light of all these factors.¹⁴ The process is objective, not subjective.¹⁵ A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.¹⁶

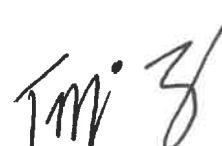
¹⁴ Paragraph [18].

¹⁵ Paragraph [18].

¹⁶ Paragraph [18].

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62. The view that the Evidence Leader exclusively must present all the evidence of all the witnesses, is firstly not borne out by the ordinary rules of grammar and syntax. Only one meaning of the rule is possible. There is not more than one meaning of the Rule.
63. The view proposed by the objectors is not sensible or businesslike. It is inflexible and fails to take into account the practicalities of running a commission of inquiry. The overall objective of the Commission is to investigate the matters before it in the public interest. No sensible purpose will be served by insisting that the Evidence Leader exclusively should present the evidence.
64. Our understanding is that as Evidence Leaders how the evidence is placed before the Commission will depend on the exigency of the moment.
65. For those witnesses who prefer to place their account through their own legal representatives, absent any prejudice, there is nothing wrong if the evidence is placed through their own legal representatives.
66. The option is available to any witness who has a legal representative.
67. The Commission's processes are inquisitorial, and not adversarial and the role of the Evidence Leaders is neutral, with the object of placing all facts relevant which will support the recommendations that the Commission will ultimately make.

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68. The view that the Evidence Leaders should lead each and every witness before the Commission is not consistent with the objects of the rules. It would seriously be oppressive and offensive for any witness who has secured a legal representative to be told that they are not entitled to place their evidence through assistance of their representative. No legal authority exists for such an extraordinary proposition.
69. One should also bear in mind the timelines under which the Commission operates. It would not be possible to consult with each and every witness with the view of the Evidence Leader leading each and every one of them, even where the witness has a legal representative. One has to take a realistic view, given the time constraints. The Commission has to operate within the realities of the timelines imposed on it.
70. We ask for a ruling that every witness who is legally represented may at their election place their evidence before the Commission through the assistance of their legal representatives. Of course, the Evidence Leaders retain the right to put any question to any such witness.
71. Ultimately, the placing of all the evidence will remain the overall responsibility of the Evidence Leaders.
72. Our experience with other Commissions, like the Arms Deal Commission, Usindiso and Marikana Commissions, is that it is not uncommon for certain witnesses to be led by their legal representatives.

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73. The argument that the witnesses are to be led by the Evidence Leaders exclusively is not supported by any law, convention or practice.
74. As a concluding remark, it is not novel for a commission of inquiry to have a party's legal representative lead that party's evidence. We make reference to the Marikana Commission of Inquiry as an example.
75. In the Marikana Commission, the then Deputy President of the Republic of South Africa and current President Matamela Cyril Ramaphosa was led in his evidence by his counsel. An excerpt from the transcriptions dated 11 August 2014 marked "A" bears this out.
76. Some other witnesses in the Marikana Commission were also led by their counsel, as appears from an excerpt of the hearing held on 27 August 2024 marked "B".
77. It is trite that the right *audi* does not arise with every decision made in the exercise of public power. First, the objector must establish the right they have to be heard. None has been claimed by the objectors. The second basis under which the objectors would claim a right to procedural fairness is if they establish a legitimate expectation of such a right. Similarly, none has been claimed or established. Whether the objector has the right to procedural fairness and in what manner is case-by-case specific. Further that a party seeking to rely on that right must fully set out the relevant facts and the context that warrants that right. In determining the issues, the Constitutional Court held that our Courts should be slow to impose an obligation upon the Government.

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The mere fact that the party has a mere interest does not entitle them to procedural fairness. In the context of a Commission with a limited life span , it should not be over burdened with the duty to grant *audi* even on secondary issues in relation to the Commissions' work. This is more so in instances where the decision does not have a direct prejudicial, direct and substantial external legal effect to the rights of the objectors.¹⁷

78. The purpose of Rule 3.1 is to exclude the rigidity of the evidence leaders having to put questions to the witnesses in instances where it is practically inconvenient or more efficient that such exercise is done by someone either than the evidence leader.

CONCLUSION

79. The Commission should also issue a ruling that no irregularity was committed in the manner in which the Calata parties were allowed to lead their evidence through their legal representatives. the Rules do not provide that the Evidence Leader should exclusively present the evidence of all witnesses before the Commission. Those parties who wish to have their legal representatives lead their evidence should be allowed to do so, under the overall responsibility of the Evidence Leader.

¹⁷ See decisions of: Minister of Public Works and Others v Kyalami Ridge Environmental Association and Another (Mukhwevho Intervening) 2001 (3) SA 1151 (CC) and Premier, Mpumalanga, and Another v Executive Committee, Association of State-Aided Schools, Eastern Transvaal 1999(2) SA 91 (CC) (as per C. Hoexter, "Administrative Law In South Africa", 2nd Edition at pp 398-402, fns 243 and 252).



EVIDENCE LEADERS

7 November 2025

TM: 38



The Secretary:

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

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

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Dear Sir

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

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

2.3. Former Minister Charles Nqakula;

2.4. Former Minister Ronald Kasrils; and

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

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

Yours faithfully



Boqwana Burns Inc.



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

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

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INTRODUCTION

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

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

Summary position

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

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

² Letter from the Commission dated 27 October 2025.

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4.2 Second, Rule 3.1 of the Rules of the Judicial Commission ("Rules")³ provides that the Evidence Leaders bear the primary responsibility to present the evidence of witnesses before the Commission. However, the Chairperson of the Commission may direct otherwise in regard to any specific witness. We understand this to mean that the default position is that the Evidence Leaders should present the evidence of witnesses. However, the Chairperson of the Commission may, as an exception, direct that a legal representative leads the evidence of a witness.

4.3 We submit, therefore, that Rule 3.1 must be interpreted to mean that: (a) the Chairperson of the Commission may (naturally, on request) permit the leading of evidence by a legal representative; (b) the legal representative must set out cogent reasons for the request. The application may be by way of a letter addressed to the Chairperson of the Commission (and Commissioners) and the affected parties; (c) the Chairperson may invite comments from an affected party, but ultimately it is the Chairperson who decides whether to grant the request; (d) a record of the request, objection (if any) and the directive must be sent to all parties to the Commission.

5. The question is thus not whether all evidence should exclusively be led by the Evidence Leaders. Properly stated, the question is whether in the present instance, the Calata and Other families ("Calata Group")⁴ were properly

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

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

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

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

6. The related question is whether the Rules envisage that evidence may be led by a legal practitioner. Our submission is that properly construed, Rule 3.1 envisages that legal representatives may lead the evidence of their witness, however, this is only on the direction of the Chairperson of the Commission, pursuant to the process we outline above – which includes an invitation for objections from affected parties.

7. We elaborate on these submissions in what follows, but before we do so, we provide the factual context. Then, we set out the legal context that applies to the Commission.

FACTUAL CONTEXT

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

A handwritten signature in black ink, appearing to read "Tm 38".

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

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

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

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

11. Mr Semenya SC answered:

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

⁵ Transcript p 75 lines 19-24.

⁶ Transcript p 78 lines 10-14.

⁷ Transcript p 78 lines 15-17.

⁸ Transcript p79-80 lines 23-25; 1-4.

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

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

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

⁹ Transcript p80 lines 5-19.

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

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

¹⁰ Transcript p82 lines 7-8.

¹¹ Transcript p82 lines 10-17.

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

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

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

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

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

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

¹³ Transcript p85 lines 10-21.

¹⁴ Transcript p87 lines 7-10.

¹⁵ Transcript p88-89 lines 7-10.

¹⁶ Transcript p89 lines 14-19.

¹⁷ Transcript p89 lines 20-25.

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

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

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

¹⁹ Transcript p93 lines 7-11.

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

²¹ Transcript p95 lines 18-23.

²² Transcript p99 lines 14-19.

²³ Transcript p95 lines 5-10.

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

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

²⁴ Transcript p98 lines 1-20.

²⁵ Transcript p99 lines 9-19.

²⁶ Transcript p101 lines 7-20.

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

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

They advised the Chairperson that:

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

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

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

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

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

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

25. The Chairperson of the Commission responded to the above letter on 19

September 2025, that:

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

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

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

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

THE LEGAL CONTEXT APPLICABLE TO THIS COMMISSION

27. We turn now to set out the legal framework that is applicable to *this* Commission.

28. Section 84(2)(f) of the Constitution empowers the President to appoint commissions of inquiry. It is common cause that this Commission was established in terms of section 84(2)(f) of the Constitution, and the Terms of Reference were issued on 25 May 2025.

29. In terms of section 1(1)(a) of the Commissions Act 8 of 1947 (the "Commission Act"), the President may declare the provisions of that Act applicable with reference to the Commission. The President, in establishing this Commission, directed that the Commission Act shall apply to the Commission.²⁸ This is set out in Item 4 of the Terms of Reference.

30. Section 1(1)(b) of the Commission Act authorises the promulgation of regulations which regulations may, *inter alia*, (iii) provide for the manner of holding or the procedure to be followed at the investigation. Item 5 of the Terms of Reference of this Commission authorises the making of regulations to enable the Commission to conduct its work meaningfully and efficiently. This item reads as follows:

²⁸ Item 4 of the Commissions Terms of Reference.

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

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

- 31.1 In terms of Regulation 3, the Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of its functions, in a capacity other than that of a member.
- 31.2 Regulation 6 deals with representation. It provides that "any person appearing before the Commission may be assisted by an advocate or an attorney."
- 31.3 Regulation 8 sets out provisions relevant to the examination of persons appearing before the Commission. In terms of section 8(4)(a):

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

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

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

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

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

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

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

32.2 Rule 3.1 stipulates that:

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

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

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

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

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

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

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

NATURE AND FUNCTION OF A COMMISSION AND ROLE OF EVIDENCE LEADERS

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

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

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

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

³² *Zuma*, para 2.

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

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

Translated

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

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

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

40. The Full Court made several important findings in setting aside the Arms Deal Commission's findings. It held that a commission must operate within the framework of the principles of legality.³⁴ It also stressed that in order for it to complete its mandate and in the exercise of its functions, the Arms Deal Commission could not, for example, perform its tasks by demonstrating bias, breach fundamental principles of fairness or commit significant errors of law such as refusing to admit evidence on manifestly incorrect legal grounds.³⁵

41. Significantly, the court looked at how the statements and documentary evidence of key witnesses was treated, and how their oral evidence was conducted by the Arms Deal Commission and the evidence leaders to impugn the Arms Deal Commission's findings. Regarding oral evidence, the court found that:

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

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

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

³⁵ *Corruption Watch* para 51.

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

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

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

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

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

³⁶ Corruption Watch para 64.

³⁷ Corruption Watch para 59.

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

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

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

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

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

46.1 ensure that relevant information is presented before the Commission;

46.2 interrogate witness statements presented to the Commission;

³⁸ *Corruption Watch* para 62.

³⁹ *Corruption Watch* para 69.

⁴⁰ *Corruption Watch* para 53.

⁴¹ *Corruption Watch* para 70.

- 46.3 probe and investigate allegations in witness statements;
- 46.4 call for more information where this is necessary; and
- 46.5 put the right questions to the witnesses and interrogate answers.

47. We submit that the Commission's Regulations and Rules must be assessed against these trite principles.

REGULATIONS AND RULES ARE EXPLICIT ABOUT ROLE OF EVIDENCE LEADERS

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

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

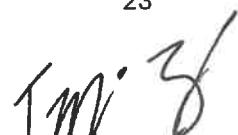
51. Given the overarching duty on the Commission and evidence leaders, we submit that even when a witness is presented by a legal representative, it is still for the evidence leaders to ensure that all relevant evidence is presented to the Commission.
52. When applied to the background facts, it is clear that:
 - 52.1 there was no request to the Chairperson of the Commission for the Calata Group to lead their own evidence; and
 - 52.2 the Regulations and Rules of the Commission provide the opportunity to lead one's own witnesses, however, an application with cogent reasons must be made to the Chairperson of the Commission. This process was not followed by the Calata Group.
53. The assertion in the letter from the Commission dated 27 October 2025 that there was an oral request, and that the decision was granted in terms of Rule 3.1 is regrettable and clearly an afterthought. The transcript of the 27 October 2025 meeting bears this out.
54. We underscore that our interpretation of the Regulations and Rules are substantiated by the letter from the Calata Group to the Commission's Chairperson on 18 September 2025. In the letter, the Calata Group specifically requested that Mr Semenya SC:-

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

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

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

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

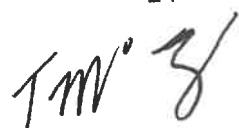


raised to the lack of supporting documents, the Commission would have to halt the witness' evidence to allow for a document request where this is possible. This would hamper the work of the Commission in a meaningful way. Whereas if the evidence leaders prepare to and lead the witnesses, they may – well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

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

CONCLUSION

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

A handwritten signature in black ink, appearing to read 'TMW' followed by a stylized '38'.

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

NGWAKO MAENETJE SC

NYOKO MUVANGUA

PHUMZILE SOKHELA

Counsel for former members of executive

5 November 2025

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Johannesburg, 2107, South Africa
Docex 26 Johannesburg
T +27 (0) 11 530 5000
www.webberwentzel.com

By email: secretary@trc-inquiry.org.za

Your reference	Our reference	Date
TRC Cases Inquiry	A Thakor / N Thema / J Venter / LM Doubell 4017862	18 September 2025

Dear Madam Justice, Khampepe

POSITION OF THE EVIDENCE LEADER VIS-À-VIS CERTAIN ASPECTS OF THE EVIDENCE

1. We refer to the above matter.
2. It has come to our attention that the chief evidence leader, Ishmael Semenya SC ("Mr Semenya"), represented the National Director of Public Prosecutions ("the NDPP") and the Minister of Justice ("the Minister") in Nkadimeng and Others v National Director of Public Prosecutions and Others [2008] ZAGPHC 422.
3. In the foregoing matter, Thembu Nkadimeng (now Simelane) and the wives of the Cradock Four ("the applicants") challenged the amendments in Appendix A to the Prosecution Policy titled: "*PROSECUTING POLICY AND DIRECTIVES RELATING TO THE PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST AND WHICH WERE COMMITTED ON OR BEFORE 11 MAY 1994*" ("the amendments").
4. The applicants contended that the amendments amounted to "a *backdoor amnesty*" and an unlawful attempt to shield apartheid-era perpetrators from justice. Judge M F Legodi declared the amendments to be unconstitutional and set them aside.
5. Our clients (who include the Simelane and Cradock Four families) intend to put up the amendments to the Prosecution Policy as a key example of how the South African government sought to intervene and block the bulk of the TRC cases from proceeding.
6. In order to avoid any public perception of partiality or conflict we respectfully request that

WEBBER WENTZELin alliance with > **Linklaters**

Page 2

Mr Semenya not be involved in any of the deliberations or leading or cross examination of witnesses in relation to the amendments of the Prosecution Policy. As there is in any event likely to be a division of labour amongst the evidence leaders, we believe this to be a practical and sensible suggestion.

7. Since the Commission must be seen by the community of victims and families and the wider public to be scrupulously independent, we trust that you will give our proposal serious consideration.
8. We look forward to hearing from you at your earliest convenience.

Yours faithfully

**WEBBER WENTZEL**

Asmita Thakor

Partner

Direct tel: +27 11 530 5875

Email: asmita.thakor@webberwentzel.com



19 September 2025

Webber Wentzel
90 Rivonia Road, Sandton
Johannesburg, 2196
Your Ref: A Thakor / N Thema / J Venter / LM Doubell 4017862

Dear Lize-Mari,

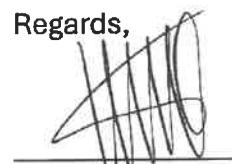
RE: POSITION OF THE EVIDENCE LEADER VIS-À-VIS CERTAIN ASPECTS OF THE EVIDENCE

1. I acknowledge with thanks your letter dated 18 September 2025 in which you raise concerns held by some of your clients about Adv Semenza SC having acted for the NPA concerning the lawfulness of the Prosecutorial Policy of the NPA.
2. I have sent your letter to Adv Semenza SC for his response.
3. He advises me that Judge Legodi, in that matter, was not called to decide whether there was any interference with the investigation or prosecution of the TRC cases which is the mandate of this Commission.
4. Having considered the concerns of your client and having heard Adv Semenza SC's response, I am minded going with a solution you propose. The concerns expressed by your client are noted. I make no decision on them. I will have another member of the Evidence Leader deal with this aspect.



I hope this assuages your clients' concerns.

Regards,



Khampepe J

Chairperson



**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**

RULING DATED 02 DECEMBER 2025

**HAVING CONSIDERED THE REASONS FOR THE CALATA GROUP'S REQUEST
TO LEAD THE EIGHT WITNESSES AND HAVING CONSIDERED THE
OBJECTIONS OF THE OTHER PARTIES.**

I hereby issue the following direction:

1 Mr. Varney may lead the evidence of the following witnesses:

- 1.1 Lukhanyo Calata
- 1.2 Thembi Simelane
- 1.3 Yasmin Sooka
- 1.4 Dumisa Ntsebeza SC
- 1.5 Ole Bubenzer
- 1.6 Michael Schmidt
- 1.7 Anton Ackermann SC
- 1.8 Adv Vusi Pikoli


**JUSTICE SISI KHAMPEPE
CHAIRPERSON**



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

FOUNDING AFFIDAVIT IN RE: NATIONAL PROSECUTING AUTHORITY
APPLICATION FOR RECUSAL

I, the undersigned,

MTHUNZI COLUMBAS MHAGA;

Do hereby state under oath as follows:

- 1 I am Special Director of Public Prosecutions and Head of Legal Affairs Division and employed as such by the National Prosecuting Authority (NPA). I am an admitted advocate of the High Court of South Africa, having been so admitted on 17 October 2022.
- 2 The facts deposed to herein are, to the best of my belief, both true and correct. These facts are based largely on the documents in the possession of the NPA to which I have unlimited access, and I have perused same in preparation for the drafting of this affidavit.
- 3 This is a supplementary affidavit filed in support of the NPA's application for the recusal of Advocate Ishmael Semenza SC as Chief Evidence Leader (alternatively as Evidence Leader in respect of all matters concerning the NPA and the Prosecution Policy governing TRC matters). It is filed pursuant

to new information that has come to the NPA's attention after the filing of its founding affidavit.

- 4 I do not repeat the legal submissions and authorities already set out in the founding affidavit and earlier correspondence. I rely on them and respectfully incorporate them by reference, insofar as may be necessary, and confine myself here to the new facts that have arisen.

A NEW INFORMATION ARISING POST THE SUBMISSION OF OUR FOUNDING AFFIDAVIT

- 5 On 14 November 2025, and in the course of preparing the institutional documentation requested by the Commission in its correspondence dated 4 November 2025, I initiated contact with Advocate Silas Ramaite SC, a former Acting National Director of Public Prosecutions, for purposes of establishing the existence, location, and extent of documentation relevant to the Commission's inquiries.
- 6 The engagement with Adv Ramaite SC was undertaken precisely to avoid duplication of processes already underway before the Commission, and to ensure that the NPA's institutional submission would be both accurate and complete. This was particularly necessary given that several affidavits before the Commission refer to Adv Ramaite SC by name and attribute to him knowledge of material facts within the relevant historical periods. During our discussion, Adv Ramaite SC informed me that he had recently been interviewed by the Commission's Evidence Leaders on 13 November 2025. He further confirmed that he met with the full complement of Evidence Leaders, including Adv Ishmael Semenza SC who participated in the interview. He confirmed that the Prosecution Policy was canvassed during that interview.

B BREACH OF THE CHAIRPERSON'S DIRECTIVE

- 7 The above revelation stands in direct contradiction to the Chairperson's written directive and undertaking, as communicated in the correspondence of 18 and 19 September 2025, wherein the Chairperson expressly assured the parties that Adv Semenya SC would not question witnesses, engage in deliberations, or participate in any aspect relating to the Prosecution Policy or matters implicating the NPA. The import of that undertaking was clear: to create a necessary buffer between Adv Semenya SC and any evidence or discussion touching upon the very issues on which he had previously advised the NPA, and which now form the core of the allegations of interference.
- 8 The revelation that Adv Semenya SC did participate in questioning a former Acting NDPP on precisely those issues suggests, at minimum, that the structural and procedural safeguards set out by the Chairperson were not observed. It demonstrates a practical reality in which a person who was expressly prohibited from engaging with the subject matter has nonetheless entered the arena of factual inquiry, posed questions on policy-related matters, and participated in an interview the Commission itself deemed sufficiently material to record.
- 9 The effect of this participation cannot be ignored. It creates the appearance that the line demarcating Adv Semenya SC's permissible role has been blurred or disregarded, thereby eroding the very assurance on which the NPA, and presumably all affected parties, were entitled to rely. The undertaking was intended to avoid precisely the scenario that has now arisen: a situation where an evidence leader with prior involvement in formulating or defending the Prosecution Policy engages with witnesses on the same policy, giving rise to a reasonable, fact-based apprehension that the inquiry may be influenced, consciously or unconsciously, by knowledge

or perspectives acquired during his previous advisory role. This highlights further why the carve out would simply not be practical.

10 Such conduct, viewed objectively, presents as an encroachment upon the boundary of impartiality that the Chairperson deliberately sought to preserve. It undermines confidence in the integrity of the process, reinforces the NPA's concerns about structural bias, and materially heightens the prejudice the NPA sought to avoid by bringing this recusal application.

C PREJUDICE & REASONABLE APPREHENSION OF BIAS

11 The new information does more than merely supplement the factual matrix underlying the NPA's application. It strikes at the core of procedural fairness and substantiates the NPA's apprehension that the Commission's processes, particularly those concerning the Prosecution Policy, are being shaped by a person who is conflicted and who was expressly barred from such involvement.

12 As set out in the founding affidavit, the test is not actual bias but whether a reasonable, objective and informed person would apprehend that the decision-maker or participant may not bring an impartial mind to bear. The conduct now revealed, namely, participation in questioning on the very policy at the heart of the allegations would lead any reasonable observer to conclude that the safeguard intended to neutralise conflict has failed in practice.

13 The prejudice to the NPA is immediate and substantive. Evidence elicited in a witness interview shapes the evidential landscape of the Commission. Once that process is influenced, even inadvertently, by a conflicted evidence leader, the resulting record is compromised at the point of creation. This is a form of structural prejudice that cannot be remedied by later objections, cross-examination, or attempts at ex post facto correction.

- 14 Further prejudice arises from the fact that the Commission operates inquisitorially. Evidence leaders are not passive clerks; they define lines of inquiry, formulate questions, test explanations, and guide the presentation of factual themes. When a conflicted person assumes such a role in relation to an issue on which he previously advised the very institution under scrutiny, the reasonable apprehension of bias is not only justified but unavoidable.
- 15 The NPA is further disadvantaged because it has no visibility into the nature, framing, or tone of the questioning that occurred, yet the consequences of that questioning will permeate the Commission's analysis and eventual findings. This opacity, coupled with the breach of the Chairperson's directive, deprives the NPA of the assurance of neutrality that the undertaking was intended to secure.
- 16 Moreover, the recurrence of the very conduct the Chairperson sought to prevent demonstrates why any "carve-out" or limited recusal is unworkable. The overlap between the Prosecution Policy, historical institutional practices, and witness testimony is too intertwined to allow for a practical separation of roles. The breach confirms, in operational form, that such separation cannot be implemented reliably.
- 17 Commissions of inquiry operate under the principle of legality, and a deliberate or even negligent failure to comply with a direct instruction of the Chairperson is a matter of real seriousness. It may, in appropriate circumstances, warrant consequences beyond recusal, but that is ultimately a matter for the Commission itself to determine.
- 18 The prejudice is systemic rather than episodic, and it necessitates a recusal to restore public confidence and ensure that the inquiry proceeds within the bounds of legality, fairness and institutional impartiality. It strikes at the heart of the LPC code of conduct.

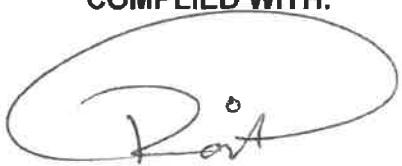
D CONCLUSION

19 In the circumstances, the NPA implores the Commissioners to rule that Adv Semenya SC be recused from the proceedings.



DEPONENT

SIGNED AND SWORN TO BEFORE ME AT *MIDRAND*, ON THIS 14 DAY OF NOVEMBER 2025, THE DEPONENT HAVING ACKNOWLEDGED IN MY PRESENCE THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THE PROVISIONS OF GOVERNMENT GAZETTE R1478 OF 11 JULY 1980 AS AMENDED BY GOVERNMENT GAZETTE R774 OF 20 APRIL 1982, CONCERNING THE TAKING OF THE OATH, HAVING BEEN COMPLIED WITH.



COMMISSIONER OF OATHS

Full names: *RANTIE SELWILSON*

Business address: *SHUTS / ORACLE, HALFWAY GARDENS*

Designation: *MIDRAND*

Capacity: *COMMISSIONER*

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
2025 -11- 14
MIDRAND
SUID-AFRIKAANSE POLISIEDIENS



Thembelihle Vika

From: Lutho Dzedze
Sent: Thursday, 18 December 2025 10:50
To: Thembelihle Vika
Subject: FW: RULING - OBJECTIONS

From: Lutho Dzedze
Sent: Wednesday, 03 December 2025 11:44
To: 'Secretary' <secretary@trc-inquiry.org.za>
Subject: RE: RULING - OBJECTIONS

Dear Advocate

We confirm receipt of the ruling with thanks.

Kindly confirm for our records whether the Chairperson will provide reasons for her ruling.

Kind regards,

Lutho Dzedze

Associate



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 82 - 84 6th Avenue
 Newton Park
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 Newton Park, 6055
 Tel: (041) 364 2039
 Fax: (041) 364 2066
 E: info@boqwanaburns.com

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 Rivonia
 PO Box 3056, Rivonia,
 Johannesburg, 2128
 Tel: (011) 234 0648

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King Williams Town Office
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 8 Queens Road
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 Amathole Valley, 5616
 Tel: (043) 642 2070

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Plettenberg Bay Office
 Bitou office Centre
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 Plettenberg Bay
 PO Box 70472
 Newton Park, 6055
 Tel: (044) 533 5966
 E: infolett@boqwanaburns.com

IMPORTANT NOTICE:

Please be aware of the increase in cybercrime and fraud.

Kindly note that we will never send you an e-mail advising you of a change of our banking details. Should you receive such an e-mail, kindly notify us immediately.

Due to the risk of e-mail-related fraud, it is crucial that you telephonically confirm our banking details prior to making any payment to us.

WE WILL NOT ACCEPT ANY RESPONSIBILITY FOR ANY PAYMENTS MADE INTO THE WRONG BANK ACCOUNT.

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

Sent: Tuesday, 02 December 2025 12:03

To: Lize-Mari Doubell <lize-mari.doubell@webberwentzel.com>; Baloyi Ronald <RonBaloyi@justice.gov.za>; Investigations Sebelemetsa Ramathiti <rsebelemetsa@justice.gov.za>; Lutho Dzedze <lutho@boqwanaburns.com>; Investigations <investigations@trc-inquiry.org.za>; Executive Assistant <executive.assistant@trc-inquiry.org.za>; Nkosinathi Thema <Nkosinathi.Thema@webberwentzel.com>; Jos.Venter <Jos.Venter@webberwentzel.com>; Thembelihle Vika <Thembelihle@boqwanaburns.com>; Athenkosi Zwelendaba <athiz@boqwanaburns.com>; Aneesa Abrahams <aneesa@boqwanaburns.com>; Irvine Armoed <irvine@boqwanaburns.com>; Mulaudzi Joseph <jmulaudzi@justice.gov.za>; Gumedo Lungelo <lugumede@justice.gov.za>; Skhonde Portia <PsKhonde@justice.gov.za>; Evidence Leaders <evidence.leaders@trc-inquiry.org.za>

Cc: Document Manager <document.manager@trc-inquiry.org.za>

Subject: RULING - OBJECTIONS

Importance: High

Dear Sir/Madam,

Please find herewith, the Ruling in respect of the objection applications, 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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03 December 2025

BOQWANA BURNS INC.

Boqwana House
84 – 6th Avenue
Newton Park, 6045

Your ref: Mr I Armoed/Aneesa

Email: irvine@boqwanaburns.com
aneesa@boqwanaburns.com

Dear Sir/Madam,

RE: RULING – OBJECTIONS

1. I am instructed to respond to your email dated 3 December 2025 enquiring whether the Chairperson will provide reasons for her ruling of 2 December 2025.
2. Rule 3.1 gives the Chairperson the power to give directions for the presentation of witness's evidence and does not require reasons to be furnished for a direction made in terms of that rule.
3. No reasons will follow.

Yours faithfully

Adv AM Thokoa
Secretary

**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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

CONFIRMATORY AFFIDAVIT

I, the undersigned,

BRIGITTE SYLVIA MABANDLA

do hereby make oath and say:

- 1 I am an adult female and former Minister of Justice and Constitutional Development from 2003 to 2008.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the founding affidavit deposed to by former President, **Thabo Mbeki** and confirm that the averments therein, as far as they relate to me.



BRIGITTE SYLVIA MABANDLA

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and deposed before me at Johannesburg on this the 18 day of **December 2025**, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

FULL NAMES: **Goodman Ntandazo Vimba**
Practising Attorney
Commissioner of Oaths
1st floor 357 Rivonia Boulevard
Rivonia
Sandton, 2128
Tel: 011 238 7991



**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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

CONFIRMATORY AFFIDAVIT

I, the undersigned,

RONNIE KASRILS

do hereby make oath and say:

- 1 I am an adult male and former Minister of Intelligence Services from 2004 to 2008.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the founding affidavit deposed to by former President, **Thabo Mbeki** and confirm that the averments therein, as far as they relate to me.

R. Kasrils

RONNIE KASRILS

RK. 1
G. N. V

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposed before me at Johannesburg on this the 18 day of **December 2025**, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS**FULL NAMES:**

at:

Goodman Ntandazo Vimba

Practising Attorney

Commissioner of Oaths

1st floor 357 Rivonia Boulevard

Rivonia

Sandton, 2128

Tel: 011 238 7991

CAPACITY:**ADDRESS:** 2

G. N. V

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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

CONFIRMATORY AFFIDAVIT

I, the undersigned,

THOKO DIDIZA

do hereby make oath and say:

- 1 I am an adult female and former Acting Minister of Justice and Constitutional Development around September 2006.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the founding affidavit deposed to by former President, Thabo Mbeki and confirm that the averments therein, as far as they relate to me.


THOKO DIDIZA

1
A7 G.N.V

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and deposited before me at Johannesburg on this the 18 day of December 2025, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with



COMMISSIONER OF OATHS

FULL NAMES:	Goodman Ntandazo Vimba
	Practising Attorney
CAPACITY:	Commissioner of Oaths
	1st floor 357 Rivonia Boulevard
ADDRESS:	Rivonia
	Sandton, 2128
	Tel: 011 238 7991

2

1.7. G.W.V

**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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

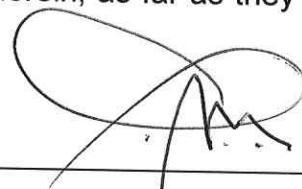
CONFIRMATORY AFFIDAVIT

I, the undersigned,

CHARLES NQAKULA

do hereby make oath and say:

- 1 I am an adult male and former Minister of Safety and Security from 2002 to 2008.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the founding affidavit deposed to by former President, **Thabo Mbeki** and confirm that the averments therein, as far as they relate to me.



CHARLES NQAKULA

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposed before me at East London on this the 20 day of 12/20/2025, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.

 | 5907980-1
CST
Mshweshwe

COMMISSIONER OF OATHS

FULL NAMES: Mshweshwe Engle
CAPACITY: Constable
ADDRESS: 03 Fleet Street

SOUTH AFRICAN POLICE SERVICE	
COMMUNITY SERVICE CENTRE	
2025	-12- 20
EAST LONDON	
EASTERN CAPE	

**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 the matter:

**THE RECUSAL APPLICATION OF THE COMMISSION CHAIRPERSON JUSTICE
SISIS KHAMPEPE**

FILING SHEET – REPLYING AFFIDAVIT

THE APPLICANT PRESENT HEREWITH FOR FILING:

1. The Applicant's Replying Affidavit in respect of the Recusal Application of the Commission Chairperson Justice Sisi Khampepe.

DATED AND SIGNED AT SANDTON ON THIS THE 09TH JANUARY 2026.



**BOQWANA BURNS INCORPORATED
Attorneys for the Applicants**

1st Floor, 357 Rivonia Boulevard
Rivonia, Sandton
Tel. (011) 234 0648
Email: irvine@boqwanaburns.com
lutho@boqwanaburns.com
Our ref: VA/CV/EMPLOY/384/07/25

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

ANDTO: **ALL INTERESTED PARTIES**
C/O THE SECRETARY OF THE COMMISSION
EMAIL: secretary@trc-inquiry.org.za

**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 the matter for the recusal application of the Commission Chairperson Justice Sisi Khampepe

REPLYING AFFIDAVIT

Recusal of Commission Chairperson, Justice Sisi Khampepe

I, the undersigned,

THABO MVUYELWA MBEKI

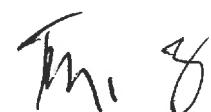
do hereby make oath and state that:

- 1 I am an adult, and the former Deputy President (10 May 1994 until 13 June 1999) and President (14 June 1999 to 24 September 2008) of the Republic of South Africa.
- 2 Unless otherwise stated or indicated by the context, the facts contained in this affidavit are within my personal knowledge and are to the best of my knowledge and belief both true and correct. Where I make submissions of a legal nature, I do so on the advice of my legal representatives. I accept such advice as correct.
- 3 I depose to this affidavit on my own behalf, as well as on behalf of Mrs Brigitte Mabandla, Mr Charles Nqakula, Mrs Thoko Didiza and Mr Ronnie Kasrils (collectively, "**the former members of the executive**"). Their confirmatory affidavits are filed together with this affidavit.



1

- 4 I have read the answering affidavit deposed to by Advocate Ishmael Semenya SC ("Adv Semenya SC") in answer to my application for the Chairperson's recusal.
- 5 As a starting point, it is unclear to us why the answering affidavit was deposed to by Adv Semenya SC in a recusal application of the Chairperson, Justice Khampepe. The allegations in the founding papers are against the Chairperson and relate to facts that are specifically within her knowledge. She is the only person who can respond to the allegations as they relate to her roles in the TRC and the NPA and her subsequent dealing with the objections raised in the Commission. These are allegations that are specific to the Chairperson. It was necessary that she – not Adv Semenya SC – depose to the answering affidavit or at the very least, submit a statement in response to the factual allegations. For reasons unknown to the applicants, she elected not to do so. She also elected not to produce a confirmatory affidavit to confirm the facts as set out in Adv Semenya SC's answering affidavit. In these circumstances, we will submit that the allegations against the Chairperson have not been properly disputed because the answering affidavit was deposed to by the wrong deponent. The allegations must therefore be treated as common cause.
- 6 Out of an abundance of caution, we nevertheless respond to Adv Semenya SC's answering affidavit. Save insofar as any allegation contained therein is expressly admitted herein, the allegations are denied.

A handwritten signature in black ink, appearing to read "Thi 8".

7 This replying affidavit is confined to those matters raised by Adv Semenza SC which call for a response. I do not repeat the contents of my founding affidavit, which stand unless expressly qualified or supplemented herein.

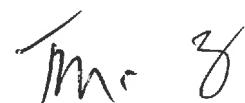
THE APPLICATION FOR RECUSAL IS NOT MALA FIDE AND IS NOT BASELESS

8 In the answering affidavit deposed to by Adv Semenza SC on behalf of the Chairperson of the Commission, it is alleged that the recusal application is not only unmeritorious, but also tainted with mala fides. The reasons advanced for this are the following. First, Adv Semenza SC asserts that the application ought to have been launched expeditiously as soon as the alleged bias was apprehended, especially given that the Chairperson was appointed in May 2025 and the applicants would have been aware of the appointment back then. Second, that the Chairperson's previous roles in the Truth and Reconciliation Commission (TRC) have no bearing on the issues to be investigated by this Commission. Third, the applicants "offer no evidence whatsoever why the Chairperson's previous positions" in the TRC and the National prosecuting Authority (NPA) would impair her impartiality on the issues relevant to the Commission's Terms of Reference. Fourth, the applicants are seeking, improperly, to reopen the decided issue of Adv Semenza's recusal application in circumstances where they did not participate in the recusal application when they could have done so. Fifth, the Calata Group is opposing the recusal application and they know that there is no substance to the application. The Calata Group also knows that the application is mainly aimed at delaying the easing of pain

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and suffering of victims and survivors of apartheid era atrocities who were not granted amnesty or did not apply for it.

- 9 Based on the above five reasons, the assertion is made that the recusal application not only lacks merit, but is also made in bad faith. This is denied. It is especially denied that the primary purpose of the application is to prolong the suffering of the victims and survivors.
- 10 The grounds for the recusal have clearly been articulated in the founding affidavit. The two grounds of complaint are (1) the Chairperson's prior and substantial institutional involvement in the TRC and the NPA and its related prosecutorial structures whose decisions, omissions and policy choices now fall for scrutiny before this Commission and (2) the Chairperson's handling of conflict of interest objections relating to Adv Semenza SC and her endorsement of a procedurally irregular arrangement between Adv Semenza SC and Advocate Howard Varney for the Calata Group permitting Adv Varney to lead the Calata Group's witnesses.
- 11 There is no basis to contend that these two grounds are spurious. The founding affidavit amply substantiates the grounds of complaint. It is also wrong to characterise the application as dilatory and ill intended towards the victims and survivors. There is simply no basis for the allegation. Stripped to its essence, the main complaint in the answering affidavit is that the recusal application ought to have been brought as soon as possible, which in the view of Adv Semenza SC should have been soon after the Chairperson's appointment was announced and

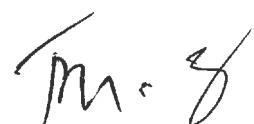
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the Terms of Reference issued. This, with respect, fundamentally obfuscates the applicants' complaint. As explained in the founding affidavit, it is the cumulative effect of the Chairperson's historical institutional proximity, when assessed together with her subsequent conduct in the Commission that gives rise to a reasonable apprehension that the Commission may not be approached with the degree of detachment, neutrality and institutional independence required by law.

- 12 In what follows, I address the answering affidavit thematically and thereafter provide ad seriatim responses.

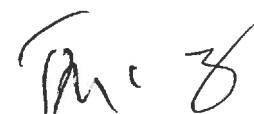
RESPONSE TO ALLEGED DELAY

- 13 The answering affidavit contends that this application is impermissibly delayed and ought to have been brought as soon as possible after 29 May 2025 when the proclamation establishing the Commission and appointing the Chairperson was issued.
- 14 This contention is misplaced, both in fact and in law.
- 15 As a starting point, I am advised that delay is not a self-standing bar to a recusal application. There are two considerations: the one is whether the failure to bring an application within a reasonable time constitutes evidence that the complainant themselves did not consider there to be a risk of bias, perceived or real. We demonstrate in this affidavit that no such conclusion can be reached. The second and decisive factor is the interests of justice. As I understand it, the primary question is whether it is in the interests of justice to permit a person, having

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knowledge of all the facts upon which recusal is sought, to wait (usually for any adverse ruling) before raising the issue of recusal. The interests of justice is a fact-based inquiry. On the present facts, it is in the interest of justice that the merits of the recusal application be considered despite any alleged delay.

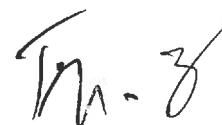
- 16 What is important is for the complaint to be determined on its merits. If the Chairperson ought to recuse herself but refuses to do so, any subsequent step taken in the Commission proceedings would be a nullity. It is in the interests of justice and the public interest in those circumstances not to permit a continuation of proceedings that may ultimately constitute a nullity on the basis of a technical timing objection. The rule against bias, actual or perceived, is constitutionally entrenched. It places a high premium on the substantive enjoyment of rights. Moreover, the irregularities that we have raised are blatant. They relate, in part, to the manner in which the Chairperson has handled serious objections that were made by several parties in the conduct of the Commission. Her approach has resulted in a serious breach of the applicants' procedural right to a Commission that is fair and impartial. In such an instance, any delay can and should be overlooked.
- 17 Second, it is incorrect to suggest that the basis for this application existed at the inception of the Commission. The Chairperson's prior institutional association with the TRC and the NPA and the Chairperson's conduct during the short life of the Commission and, more specifically, her handling of procedural objections and arrangements involving the Chief Evidence Leader, Adv Semenya SC, and

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the Calata Group's counsel, Advocate Varney, must be viewed cumulatively.

These two grounds must be viewed in context, and taken as a whole.

- 18 After the Commission started its work, and especially from 27 October 2025 until early December 2025, several landmark events happened and decisions were taken in the conduct of the Commission which crystallised the need for a recusal application. These events include the pre-hearing meeting of 27 October 2025, when objections were raised to the existence of a private and undisclosed arrangement between Adv Semenza SC and Adv Varney concerning the leading of evidence. The subsequent manner in which those objections were addressed on the one hand (including the Chairperson's procedural rulings, her endorsement of the arrangement, and her refusal to provide reasons), viewed alongside her previous involvement in the TRC and the NPA, gave rise to a reasonable apprehension that the Commission's processes were not being approached with the requisite institutional neutrality and openness of mind. These subsequent events and decisions did not exist, nor could they reasonably have been anticipated at the time of the Chairperson's appointment.
- 19 Moreover, the Commission did not start its work in May 2025 when the Chairperson was appointed. As far as the applicants are aware, the work of the Commission started in September 2025 and the applicants were issued with Rule 3.3 notices on 25 September (in respect of myself and former Ministers Mabandla, Didiza and Kasrils) and 21 October 2025 (in respect of former Minister Nqakula). The applicants would have had no basis to bring a recusal application before being issued with the Rule 3.3. notices and would have probably been

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accused of acting prematurely. Bearing in mind the assertion in the answering affidavit that the Chairperson's prior roles have no relevance to the issues in the Terms of Reference, it is highly unlikely that the Chairperson would have recused herself even if an earlier application had been brought.

20 Finally, the complaint about undue delay is misplaced and ignores the procedural context created by the Commission itself. On 3 December 2025, following a formal request by former President Zuma for the Chairperson's recusal, the Commission circulated the request to all interested and affected parties and expressly invited any party minded to participate in the recusal process to do so. That invitation objectively conveyed that the question of the Chairperson's recusal was not only live, but was regarded by the Commission as one warranting structured engagement by affected parties within a defined process. This invitation was plainly in the interests of justice and the public interest. The interests of justice and the public interest will be better served if the application is determined on its merits. Such a merits based determination will better safeguard the credibility and integrity of the Commission's processes and outcomes. I repeat the constitutional importance of the rule against bias – actual or perceived.

21 In those circumstances, it was both reasonable and procedurally appropriate for parties, including the applicants, to anticipate that the Chairperson would properly consider whether sufficient grounds existed for her recusal within the

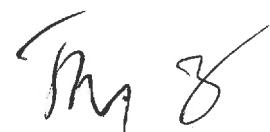
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framework she herself had initiated by expressly inviting any party minded to participate in the recusal process to do so.

22 The period now relied upon as constituting delay is therefore inseparable from, and indeed a direct consequence of, the process expressly initiated by the Commission. It cannot coherently be invoked to non-suit a party who acted in accordance with an invitation extended by the Chairperson herself.

THE CHAIRPERSON'S PRIOR ROLES AND THE TERMS OF REFERENCE

23 In the answering affidavit, Adv Semenza SC challenges the reliance by the applicants on the Chairperson's prior roles on several bases. The first is that there is no suggestion in the recusal application that the Chairperson's prior roles had to do with assessing possible interference with the non-investigation or prosecution of TRC cases. The issues in the Terms of Reference have nothing to do with her prior roles. The second is that the timelines of her prior roles, being 1995 to 2001, do not coincide with the earmarked period in the Terms of Reference, namely from 2003. These roles precede the period which the Terms of Reference are concerned with. Third, I (and the rest of the applicants) have known about the Commission and the subject of its investigations before the Commission was established and because of this, and the keen interest I demonstrated in the subject matter, I knew about the Chairperson's appointment when it was published. Yet, we did not bring a recusal application. Fourth, I together with the other applicants participated in the Commission and we were

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legally represented throughout. At no point did we or our legal representatives raise an issue about the Chairperson's prior roles.

24 In the founding affidavit, I explained, in detail, why the Chairperson's prior roles give rise to a reasonable apprehension that the Chairperson may not approach the Commission with the degree of detachment, neutrality and institutional independence required by law. It is no answer to say that the issues in the Terms of Reference do not have anything to do with her prior roles. On the contrary, the decisions of the TRC Amnesty Committee and the work of the NPA in pursuing TRC cases after amnesty was refused or not applied for lie at the heart of this Commission's work. That the Terms of Reference seeks to investigate conduct or omissions that happened after the Chairperson had vacated the two offices does nothing to diminish the complaint. In substance, the Commission's work will centre around interference with TRC cases. Some of these are cases that Justice Khampepe evaluated to decide whether or not to grant amnesty. There is clearly a direct link between the amnesty decisions which Justice Khampepe presided over and the issues in the Terms of Reference. This also applies to the NPA's work in pursuing TRC cases that were referred to it.

25 The reliance by Adv Semenza SC on the 2003 period to rebuff the complaint is also unhelpful. It is evident from the Notice in terms of Rule 3.3 that the Commission issued me with in September 2025 and from the Calata Group's founding affidavit that the year 2003 is not where the Commission's inquiry will start. The Calata Group alleges that the political influence which blocked investigation and prosecution of the TRC cases emanates from discussions with

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high ranking officials from the African National Congress (ANC) and former apartheid-era defence force generals. These discussions are alleged to have started in 1998. This allegation is contained in the Rule 3.3 notice that was issued to me (and is an annexure "SC2" to Adv Semenza SC's answering affidavit). The notice (and the Calata Group's affidavit) also explains how decisions were made within the NPA as early as 2001, about who would be responsible for investigating and prosecuting certain TRC cases or TRC related cases. The 2003 timeframe in the Terms of Reference is thus not dispositive of the complaint. The material currently before the Commission, including the Rule 3.3 notice, makes this clear.

- 26 It is also unhelpful for Adv Semenza to rely on my prior knowledge of Justice Khampepe's roles and my public iterations on the subject matter of the Commission. As I explained earlier, Justice Khampepe's earlier roles and subsequent conduct in the Commission must be looked at as a whole.
- 27 It is true that the applicants have been participating in the Commission, and did not raise the recusal of the Chairperson either by themselves or through their legal representatives. But it is also true, and Adv Semenza SC does not provide evidence to this effect, that participation in the Commission does not establish any waiver of rights. I am advised that waiver of one's rights is not lightly inferred: it must be clear, informed and unequivocal. There is nothing in the applicants' correspondence with the Commission, or their participation in the formal and informal proceedings of the Commission that can be construed as a waiver of the right to seek the Chairperson's recusal. In any event, I am advised that



whether a person should be allowed to raise the issue of recusal at a later stage, despite an earlier opportunity to do so, implicates the interests of justice and not waiver.

28 In sum, Adv Semenza SC does not provide a substantive answer to the complaint about Justice Khampepe's prior roles. He does not say why, based on the facts, a reasonable, informed observer may not reasonably apprehend a lack of impartiality.

THE ADV SEMENYA SC OBJECTIONS

29 In paragraphs 35 and subparagraphs 35.1 to 35.3, I explained that the applicants are concerned about Justice Khampepe's handling of a series of objections about covert arrangements between Adv Semenza SC and Adv Varney about the leading of witnesses by Adv Varney instead of the Evidence Leaders. I refer to this as the first leg of the complaint. I also highlighted, in paragraph 35.4, as a concern Justice Khampepe's handling of a breach by Adv Semenza SC of a directive by her which prohibits Adv Semenza SC from engaging on prosecution policy issues. This is the second leg of the complaint.

30 It is telling that the answering affidavit does not substantially address the issue of Justice Khampepe's handling of the objections, i.e., the first leg of the complaint. Nowhere in the answering affidavit is it explained why the handling of those objections may not reasonably lead to a reasonable, informed observer apprehending a lack of impartiality.

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31 Instead, much of the focus is on the unsuccessful attempts by the other interested parties to get Adv Semenya SC recused. Adv Semenya SC asserts that this application is ill conceived because it is an attempt to reopen the issue of his recusal in circumstances where the applicants chose not to participate. I reiterate that the complaint is about Justice Khampepe's handling of Adv Semenya SC's conflict issue and how this would lead to a reasonable, informed observer apprehending a lack of impartiality. The complaint calls into question her conduct in compromising the integrity of the evidence leading process. As such, it is not necessary to challenge any of the rulings relating to the two legs of the complaint. Potential conflict of interest situations amongst evidence leaders and the proper manner of leading evidence in the Commission are issues that speak directly to, and impact on, the manner in which the Chairperson runs the Commission. These are not peripheral issues. In any event, the applicants' failure to join a recusal application directed at Adv Semenya SC cannot insulate the Chairperson's subsequent rulings, procedural choices, or supervisory omissions from scrutiny, where those decisions themselves give rise to a reasonable apprehension of bias.

32 Adv Semenya SC asserts that the applicants "have all the procedural safeguards to ensure that they are treated fairly and impartially". One of those safeguards, which he does not mention, is to appear before a Chairperson who is impartial. It is cold comfort to say that the applicants have a right to present information or cross examine in circumstances where the procedural choices of the Chairperson give rise to a reasonable apprehension of bias.

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SEQUENTIAL RESPONSES TO THE ANSWERING AFFIDAVIT

Ad paragraphs 1 to 2

33 I deny that all the facts in the answering affidavit are true and correct. I admit the rest of the allegations.

Ad paragraph 3

34 I note that the deponent seeks to incorporate, by reference, the contents of the answering affidavit deposed to in opposing the recusal application by former President Zuma.

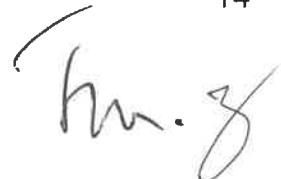
Ad paragraphs 4 to 7

35 I note the allegations in these paragraphs.

Ad paragraphs 8, 8.1 to 8.3

36 To the extent that these paragraphs record the publication of the proclamation, the appointment of the Chairperson, and the existence of the Commission's Terms of Reference, they are not in dispute. It is however denied that the application is unmeritorious and tainted with mala fides.

37 The mere fact that the Commission was established by proclamation, and that the identity of the Chairperson and the Terms of Reference were known at an early stage, does not render a subsequent recusal application unmeritorious. The applicable test is not whether the Chairperson was lawfully appointed, but

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whether, on objectively ascertainable facts, a reasonable apprehension of bias has arisen.

38 I have addressed the substance of the issue of the Terms of Reference above, in the submissions earlier in this affidavit.

Ad paragraph 9

39 Insofar as the respondent contends that the focus should be on whether a reasonable, objective and informed person would apprehend a lack of impartiality, I agree. That is precisely the case advanced in the founding affidavit, applying the established test. It is this case that must be decided on its merits and not on the basis of a technical timing objection.

Ad paragraphs 10 to 11

40 The respondent's difficulty is that he answers a case that is not made. He answers his own case. The founding affidavit does not assert that Justice Khampepe is disqualified merely because she served in the TRC or the NPA – albeit in the proper context that is on its own a weighty and potentially decisive issue. The case is that her prior institutional involvement in the very structures and processes which are now under scrutiny, viewed together with her handling of fundamental procedural objections cumulatively and objectively give rise to a reasonable apprehension that she may lack the necessary institutional detachment required of the Chairperson of this Commission.

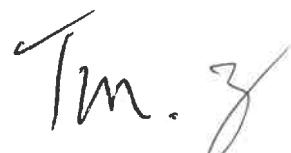
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41 As I explained earlier, the reliance on timelines is misplaced. The founding affidavit shows a material overlap between Justice Khampepe's TRC/Amnesty Committee role (1995–2001) and her senior prosecutorial role (1998–1999), during which period she was simultaneously involved in TRC processes and in the NPA at a senior level.

42 Moreover, the founding affidavit records that Justice Khampepe played a role in the Human Rights Investigation Unit within the NPA, including advising the National Director of Public Prosecutions on the approach to TRC matters. That is not a trivial historical fact: it is direct institutional proximity to the prosecutorial treatment of TRC matters, which is the very subject matter this Commission is tasked to interrogate.

43 The respondent's contention that there is no conceivable basis to suggest that Justice Khampepe's TRC role could connect to this Commission's mandate is denied. Justice Khampepe served on the Amnesty Committee which made determinations in respect of perpetrators, including in matters directly implicating the Calata family and myself. Those determinations lie at the heart of the TRC's recommendations on prosecutions and, objectively, a reasonable observer may apprehend a predisposition to justify or defend prior institutional conclusions in which the Chairperson played a key decision-making role.

44 I reiterate that the reliance on the proposition that the Terms of Reference ("TORs") concern interference "since 2003" does not assist. First, the founding affidavit identifies an apparent anomaly in the delineated period and notes that,

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given the TRC Report in 1998 and the trajectory of post-TRC prosecutorial decisions, the questions the Commission is asked to investigate would objectively have arisen well before 2003.

45 Second, and in any event, the reasonable apprehension does not depend on proving that Justice Khampepe investigated the same issues in her previous roles, which is not alleged. The apprehension arises from her institutional proximity to the TRC findings and amnesty processes, her senior prosecutorial role contemporaneous with the operationalisation of structures dealing with TRC matters, and the objective risk that she may be drawn into explaining or defending decisions and institutional approaches during her tenure, all of which undermine the appearance of the necessary detachment.

46 The assertion that the application is unmeritorious, or that no evidence is offered in support of a reasonable apprehension of bias, is accordingly denied.

Ad paragraphs 13 to 14

47 The contents of these paragraphs are denied. The respondent deliberately mischaracterises this application. We are not and neither were we applicants in any process aimed at the removal or recusal of Adv Semenza SC as an Evidence Leader. Nor is this application an attempt to “resuscitate” any such issue “via the back door”.

48 The relief we seek is directed at the recusal of the Chairperson, Justice Khampepe, on two distinct, but mutually reinforcing grounds set out in the

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founding affidavit: (a) her prior institutional involvement in matters connected to the TRC and the NPA; and (b) the manner in which she handled conflict-of-interest objections concerning Adv Semenya SC and her endorsement of a procedurally irregular and privately-arranged arrangement between Adv Semenya SC and Adv Varney relating to the leading of the Calata Group witnesses.

- 49 In particular, the complaint under the second ground in the founding affidavit is not for the recusal of Adv Semenya SC as the Evidence Leader. It concerns the Chairperson's own conduct as Chair, including her approach to the objections raised; her authorisation of an irregular departure from the Commission's rules and processes in relation to witness-leading; and her failure to grapple with, and enforce, her own directive aimed at insulating Adv Semenya SC from matters involving the prosecution policy.
- 50 The respondent's attempt to conflate the focus of the issues involving Adv Semenya SC, with the present application for the Chairperson's recusal, is therefore misconceived.
- 51 It is correct that the applicants waited to review the Zuma application. This was a prudent decision aimed at avoiding a duplication of efforts. Upon reading the application, it was assessed that differently framed grounds of recusal could be brought. This was done not because the applicants lack confidence in the Zuma application (which is an astonishing assertion), but because the applicants saw fit to frame their grounds of recusal differently. As appears from the founding

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affidavit, this application is grounded on facts and events particular to our position as affected parties before the Commission, including the Chairperson's handling of objections and procedural irregularities concerning the evidence-leading process, as well as the later-emerging breach by Adv Semenya SC of the Chairperson's written directive. Those are not dependent on, and are not exhausted by, President Zuma's application.

52 In any event, the Commission itself made the recusal issue live and structured when it circulated the Zuma recusal request to interested and affected parties and invited participation. In that procedural context, it was reasonable for affected parties to assess the issues and to act promptly thereafter.

Ad paragraphs 15 to 16

53 I have addressed the allegations in these paragraphs earlier in this affidavit. They are denied.

Ad paragraph 17

54 The allegations in this paragraph are denied. The assertions made are inappropriate, speculative, and highly concerning for an Evidence Leader of a Commission of this magnitude dealing with such sensitive issues of immense historical and contemporary significance. Adv Semenya SC attributes improper motives to the applicants, asserts the absence of substance in the application, and suggests that the application is intended to delay the "easing of pain and suffering" of victims and survivors of apartheid-era atrocities.

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55 Such assertions go beyond answering the case advanced. They amount to value judgments and conclusions on the merits of the application and the issues before the Commission. They risk conveying that conclusions have already been reached, not only in relation to the recusal application, but also in relation to the broader moral framing of the Commission's work.

56 The suggestion that the applicants are positioned in opposition to victims and survivors of apartheid is particularly objectionable. I, like many millions of South Africans, was myself a victim of apartheid.

57 This application is not an attack on victims, nor is it an attempt to frustrate the Commission's mandate. It is brought to safeguard the integrity, impartiality, and public legitimacy of the Commission's process, values which are themselves essential to meaningful justice and to the healing that Adv Semenya invokes.

Ad paragraph 18

58 I have addressed the allegations in this paragraph earlier in this affidavit. They are denied.

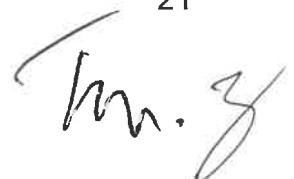
Ad paragraphs 19 to 23

59 The allegations in these paragraphs are denied insofar as they are relevant, and in any event they do not advance the respondent's opposition to the present recusal application. It is especially denied that the applicants did not deal with

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why they did not bring the application shortly after May 2025. The foundation of the applicants' case belies this assertion.

- 60 The averments concerning the applicants' intervention in the High Court proceedings in the Calata matter (which not all applicants tried to intervene in), or their alleged failure to respond to Rule 3.3 notices are irrelevant to the determination of this application. The issue before the Commission is a narrow one: whether, on the correct facts, a reasonable, objective and informed person would apprehend that the Chairperson may not bring an impartial mind to bear on the matters before the Commission.
- 61 Allegations of "prevarication", non-cooperation, or absence of *bona fides* are misplaced. They seek impermissibly to convert a recusal enquiry into an assessment of the applicants' conduct on the merits of issues that fall to be dealt with by the Commission at a later stage, if at all. Such considerations have no bearing on whether the Chairperson ought to recuse herself.
- 62 In particular, the suggestion that the applicants have failed to provide statements is misleading. As appears from the various correspondence from my attorneys to the evidence leaders, the difficulty lies not with any unwillingness on the part of the applicants to account for their conduct, but with the fact that the Evidence Leaders have not formulated clear, coherent witness statements or allegations, and have instead relied on broad references to pleadings and allegations contained in the High Court matter involving the Calata Group. They have also failed to assist the applicants with any relevant documents, such as minutes of

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meetings, that, if exist, ought to be in the custody of government. Proper preliminary inquiries and investigations by evidence leaders and supporting investigators ought to have yielded such relevant documents if they exist since the Commission started its work at least in September 2025. The applicants have made appropriate requests and have received no proper assistance. It seems that the evidence leaders and supporting investigators can do no better than put before the applicants allegations by the Calata Group and expect them to answer adversarial style. Respectfully, this is not how a Commission – being a fair and impartial fact finding process – ought to be approached. I attach the correspondence to the Commission requesting witness statements and the relevant documentation as Annexure “TMM 1”, “TMM2”, “TMM3” and “TMM4”.

- 63 The reliance on extracts from the Calata papers in the High Court matter, without translating those allegations into properly particularised witness statements under the Commission’s Rules, places affected parties in an invidious position and undermines procedural fairness.
- 64 It is therefore incorrect to suggest that the applicants’ conduct evidences a lack of *bona fides*. On the contrary, the concern repeatedly raised is that the evidence-leading process has proceeded without the discipline required by the Commission’s Rules, and that this has been compounded by the Chairperson’s failure to insist on compliance with those Rules.
- 65 The invocation of the public interest and the Commission’s ultimate mandate does not assist the respondent. Public interest cannot legitimise a process that

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is procedurally unfair or that gives rise to a reasonable perception of institutional partiality. Fairness and impartiality are not inimical to the public interest; they are its necessary foundation.

Ad paragraphs 25 to 27

66 The allegations in these paragraphs are noted.

Ad paragraph 28

67 I have addressed the allegations in this paragraph earlier in this affidavit. They are denied.

Ad paragraphs 29 to 31.2

68 The allegations in these paragraphs are noted.

Ad paragraphs 32 to 34

69 It is correct that the Commission's TORs identify a period commencing in 2003. That fact, however, is not dispositive of the present recusal enquiry.

70 The recusal application does not rest on the proposition that the Chairperson is required, under the TORs, to adjudicate her own conduct as a former TRC Commissioner. It rests on the objectively grounded concern that her prior institutional involvement in the TRC, including participation in amnesty determinations and findings that underpin subsequent prosecutorial decisions and her participation in the NPA relevant to those cases and related processes,

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gives rise to a reasonable apprehension that she may lack the necessary institutional detachment when presiding over an inquiry scrutinising the downstream consequences of those processes.

- 71 The respondent's attempt to draw a rigid temporal boundary between the Chairperson's tenure at the TRC and the period covered by the TORs misconceives the nature of the enquiry. The Commission is tasked with investigating whether, and why, TRC cases were not investigated or prosecuted. That question is inextricably linked to the TRC's amnesty processes, findings, and referrals, which necessarily pre-date 2003. This, amongst others, constitutes the relevant legal and historical context.
- 72 The fact that the Chairperson was not, during her TRC tenure, required to investigate post-2003 interference is therefore besides the point. The reasonable apprehension arises from her prior adjudicative and institutional role in processes whose outcomes and recommendations form the foundation of the matters now under scrutiny.
- 73 More specifically, the above paragraphs conflate the scope of the Commission's mandate with the test for recusal. The latter is concerned with appearance and institutional proximity, not with formal temporal jurisdiction.

Ad paragraphs 35 to 39

- 74 I have addressed the allegations in this paragraph earlier in this affidavit. I have especially addressed the issue of the timeline of 2003, contrasted with the issues

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already before the Commission that evidently pre-date 2003. To the extent that the contents of these paragraphs contradict my earlier evidence, they are denied.

Ad paragraph 40

75 The allegation in this paragraph is noted.

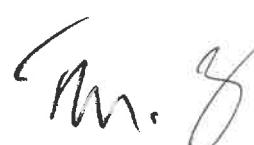
Ad paragraphs 41 to 41.8

76 The contents of the above paragraphs are denied insofar as they suggest that the application is inconsistent, opportunistic, or evidences any “disconnect” between my conduct and the grounds for recusal.

77 The respondent’s characterisation is mischievous. I am not opposed to the establishment or mandate of the Commission. The present application concerns a narrow constitutional requirement: that the Commission be, and be seen to be, impartial. The relief sought is directed at safeguarding institutional integrity, not resisting accountability.

78 The reliance on public commentary, media engagements, or my awareness of the Commission’s establishment is besides the point. A party’s awareness of a Commission, or engagement with public debate about it, does not preclude that party from later seeking recusal where objectively justifying facts arise that found a reasonable apprehension of bias.

79 The insinuation that I ought to have challenged the Chairperson’s appointment immediately upon gazetting misconceives the test and the chronology. The recusal application is not premised solely on the fact of Justice Khampepe’s past



roles. It is premised on the cumulative effect of (a) her prior institutional proximity and (b) subsequent procedural developments and rulings while presiding as Chairperson, particularly her handling of objections, endorsement of irregular arrangements, and the failure to enforce her own directive. Those latter matters necessarily arose during the Commission's processes and could not have been challenged at the moment of gazetting.

- 80 In any event, the Commission itself made the issue of recusal live and structured when it circulated the Zuma recusal request to affected parties and invited participation. In that procedural context, it was reasonable and appropriate to consider the issues and to act timeously thereafter.
- 81 The allegations regarding legal representation and the suggestion that there was "not even a whisper" of concern in pre-hearing engagements are irrelevant. The applicable enquiry is objective and fact-based: whether the facts now before the decision-maker justify a reasonable apprehension of bias. It is not defeated by rhetorical references to what counsel or attorneys may or may not have raised earlier, particularly where the application is also grounded on later-emerging facts and the Chairperson's own conduct while presiding.
- 82 The reference to the provision of witness statements is likewise a red herring. The recusal application does not turn on whether statements have been furnished. It turns on whether the Chairperson ought to continue presiding in circumstances that objectively give rise to a reasonable apprehension of bias.

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Conflating these issues is an attempt to distract from the real question before the Commission.

- 83 Furthermore, the fact that my legal representatives engaged with the Commission regarding the preparation, discussion, or possible finalisation of draft witness statements does not constitute a waiver of the right to seek the recusal of the Chairperson, nor does it negate the existence of an objectively reasonable apprehension of bias.
- 84 The simple point is that if the Chairperson ought to recuse herself but refuses, all subsequent proceedings will be a nullity. This will result in a waste of public funds. It will also undermine the interests of justice and the public interest, including the interests of victims and survivors.
- 85 Engagement with a Commission's processes, including cooperation on procedural matters, is not inconsistent with asserting constitutional safeguards where concerns arise regarding impartiality. To hold otherwise would place affected parties in an untenable position, forcing them to choose between cooperation and the preservation of their rights.
- 86 The recusal application is founded on grounds that include later-arising procedural developments and rulings by the Chairperson. Those matters stand independently of any parallel discussions regarding witness statements and cannot be neutralised by references to routine engagement with the Commission.

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Ad paragraphs 42 to 55

87 The factual narrative of engagements with the Commission is largely beside the point and does not establish any waiver of rights.

88 Participation in the Commission's processes, including responding to Rule 3.3 notices, corresponding with the Commission, attending pre-hearing meetings, requesting documentation, and engaging on practical arrangements for statements, cannot in law amount to a waiver of the right to seek the Chairperson's recusal. In any event, waiver does not arise.

89 In any event, it would be untenable if affected parties were required to choose between cooperating with a Commission's processes and preserving their right to insist on the constitutional requirement of impartial adjudication. Cooperation promotes orderly process; it does not immunise procedural irregularity or preclude a recusal application when objectively justifying facts arise.

90 The respondent's reliance on the chronology of engagement between the applicants and the Commission is therefore misconceived and should be afforded no weight in the determination of the recusal enquiry.

91 I point out that the answering affidavit alleges, in paragraph 52, that the Commission ". . . forwarded the statements to the legal representatives of the applicants". If it is implied by this that the applicants were provided with witness statements as envisaged under the Commission's rules, then this is incorrect. The applicants have to date not been provided with any witness statements that

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succinctly set out the facts relevant to the allegations against them. In reply to our request of the 07 November 2025 for witness statements, the Commission responded by merely stating that it had forwarded our request to Webber Wentzel, the legal representatives of the Calata Group of witnesses. See **Annexure “TMM5”**. For their part, Webber Wentzel merely responded by directing us to Calata Group of witnesses’ litigation papers from the High Court. See **Annexure “TMM6”**.

92 Adv Semenya SC consistently refers to the applicants’ failure to participate in his recusal application. Respectfully, this has nothing to do with the present recusal application. He also insists that the applicants cannot, on one hand, participate in the Commission without raising any complaint about the Chairperson and his involvement in the]Commission’s work, and on the other, seek to request the Chairperson’s recusal. As explained earlier, the applicants did not waive any of their rights. So there is nothing odd about the applicants’ continued communication with the Commission and participation in the Commission after the objection ruling was delivered and the request for reasons refused.

Ad paragraph 56

93 The contents of this paragraph are denied. For the reasons set out above, and properly understood, the first ground advanced is firmly rooted in established principles governing recusal. It concerns prior institutional involvement and proximity to processes and decisions that lie at the heart of the Commission’s

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mandate and which, viewed objectively and cumulatively, give rise to a reasonable apprehension of bias.

Ad paragraphs 57 to 58

94 The allegations in these paragraphs are noted. As I stated earlier, the Chairperson's handling of Adv Semenza SC's conflict is the second leg to this complaint. The first and crucial complaint is how the Chairperson dealt with the objections to the undisclosed arrangement between Adv Semenza SC and Adv Varney regarding the leading of witnesses.

Ad paragraph 59

95 The allegation in this paragraph misconceives the nature of the second ground relied upon in the recusal application.

96 The applicants' case under Ground Two is not that Adv Semenza ought to have been recused as Evidence Leader *per se*, nor does it depend on whether the applicants formally joined the recusal application brought by the NPA and the Minister of Justice. That is not the enquiry.

97 The enquiry under Ground Two concerns the Chairperson's handling of the objections raised, including her response to the existence of an undisclosed private arrangement for the leading of witnesses, her endorsement of that arrangement without adherence to the Commission's Rules, and her failure to enforce her own directive aimed at managing an acknowledged conflict of interest.

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98 The fact that the NPA and the Minister of Justice pursued a formal application for the recusal of Adv Semenya SC, while the applicants confined themselves to written submissions and objections regarding the propriety of the witness leading arrangement and its consequences for procedural fairness, is neither surprising nor legally significant. Different parties were entitled to adopt different approaches to these procedural objections. The NPA and the Minister amply addressed the recusal application and the applicants' participation would not have added anything new to the discussion.

99 In any event, the applicants' failure to join a recusal application directed at Adv Semenya SC cannot insulate the Chairperson's subsequent rulings, procedural choices, or supervisory omissions from scrutiny, where those decisions themselves give rise to a reasonable apprehension of bias.

Ad paragraph 60

100 It is correct that the parties agreed to an order, which was to the effect that the Chairperson would consider the papers before her (including the applicants and other parties' objections) and make a ruling. Despite the clear wording of the rules, the ruling was not supported by any reasons and no reasons were forthcoming after the applicants' request therefore.

Ad paragraphs 61 and 62

101 The allegations in these paragraphs are denied to the extent that they misrepresent the essence of this application. In particular, the complaint under

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Ground Two in the founding affidavit is not directed at the recusal of Adv Semenya SC as Evidence Leader. It concerns the Chairperson's own conduct as Chair, including her approach to the objections raised; her authorisation of an irregular departure from the Commission's Rules and processes in relation to the leading of witnesses; and her failure to grapple with, and enforce, her own directive aimed at insulating Adv Semenya SC from matters involving the prosecution policy.

102 The conflation is therefore misplaced and seeks to obscure the true basis of the relief sought.

Ad paragraphs 63 to 69

103 The contents of the above paragraphs proceed from an incorrect premise. They fail to engage with the case advanced in the founding affidavit and are therefore denied.

104 This application is not a challenge to the correctness of the ruling dismissing the recusal of Adv Semenya SC, nor is it an attempt to appeal, review, or reconsider that ruling. As already explained above, it is a recusal application directed at the Chairperson, founded on an objectively reasonable apprehension of bias on the grounds identified and comprehensively explained in my founding affidavit.

105 Adv Semenya SC's deliberate attempt to characterise the application as one motivated by dissatisfaction with the Chairperson's ruling in respect of the outcome of the Evidence Leader's recusal application ruling misconceives the

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nature of this recusal application. A recusal application is not concerned with whether a ruling is right or wrong, but with whether the manner in which issues were approached gives rise, viewed objectively, to a reasonable apprehension that the decision-maker may lack impartiality.

106 It is therefore incorrect to suggest that the applicants were required to pursue reconsideration or review proceedings as a prerequisite to seeking recusal. Those remedies address the validity of a decision; recusal addresses the suitability of the decision-maker to continue presiding.

107 I am advised that Adv Semenya SC's contention that it is impermissible to raise a recusal application in these circumstances is wrong in law. Where conduct during proceedings gives rise to a reasonable apprehension of bias, recusal is not only permissible but required to safeguard the integrity of the process.

108 The assertion that no objective link exists between Adv Semenya SC's continued participation and the apprehension of bias again answers a case not made. The apprehension does not arise from Adv Semenya SC's role in isolation, but from the Chairperson's response to objections concerning conflicts of interest, her endorsement of an irregular arrangement, and her failure to enforce her own directive.

109 The essence of the above paragraphs is to seek to insulate the Chairperson's conduct from scrutiny by mislabelling this application as a collateral attack on her ruling in respect of Adv Semenya SC's continued role as the Commission's Evidence Leader. That characterisation is rejected.

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Ad paragraphs 70 to 75

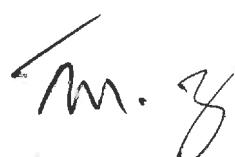
110 It is accepted that the test for recusal is well established. The applicants' case, however, is that when that test is correctly applied to the cumulative facts set out in the founding affidavit and supplemented herein, a reasonable, objective and informed person would apprehend a lack of impartiality on the part of the Chairperson. The assertion that no evidence has been provided is denied.

111 The respondent's reliance on the inquisitorial nature of the Commission does not assist. The duty of impartiality applies with equal, if not greater, force in inquisitorial proceedings, where the Chairperson exercises extensive control over process, evidence-leading and procedural rulings.

112 The contention that the applicants are adequately protected by procedural safeguards misconceives the enquiry. The existence of safeguards does not cure, nor does it displace, a reasonable apprehension of bias on the part of the presiding decision-maker.

113 The suggestion that the applicants' obligation is simply to cooperate and place evidence before the Commission again answers a case not made. Cooperation with a process does not require acquiescence in circumstances that objectively undermine confidence in the impartiality of the presiding Chairperson.

114 For these reasons, and for the reasons set out above, the respondent's conclusion that the second ground is misconceived and without merit is denied.

Ad paragraph 76A handwritten signature in black ink, appearing to read "M. Y." or a similar initials.

115 The contents of this paragraph are denied. The respondent has not engaged with the merits of the recusal application as properly formulated, but has instead largely addressed a misconceived case, conflated distinct issues, and advanced arguments irrelevant to the narrow enquiry before the Commission.

Ad paragraphs 77 to 79

116 I have addressed the allegations in this affidavit earlier in this affidavit. They are denied.

Ad paragraph 80

117 The contents of this paragraph are denied. It is incorrect that the applicants' objections are founded on any perception that the Commission is a "dress rehearsal" for the High Court litigation in the Calata matter. As appears from the founding affidavit, the objections raised concern procedural fairness, institutional neutrality, and compliance with the Commission's own Rules, particularly in relation to the leading of evidence and the endorsement of an irregular private arrangement. This is also apparent from the written submissions that the applicants made when they opposed the leading of witnesses by own legal representatives as the default position.

118 The applicants do not dispute that the Commission is inquisitorial in nature. On the contrary, it is precisely because of its inquisitorial character, and the central role played by the Chairperson in controlling procedure, evidence-leading and

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rulings, that strict adherence to transparency, fairness and impartiality is required.

119 For the reasons set out above, the cumulative effect of Justice Khampepe's prior involvement in the TRC and the NPA, together with her handling of objections pertaining to Adv Semenya SC, gives rise to a reasonable apprehension of bias when viewed through the eyes of the informed, objective observer. These concerns go to the heart of the Commission's fact-finding integrity.

120 The respondent's attempt to reframe principled objections to procedural irregularity as resistance to the Commission's mandate answers a case that is not made and should be rejected.

Ad paragraph 81

121 To the extent that it is alleged that the applicants' legal representatives were not present and chose not to participate in the objection to the leading of own witnesses, this is vehemently denied. The applicants fully participated in that application. It is also denied that the complaint was settled. The agreed upon order was not to settle the issue, but to allow the Chairperson to consider the request (made then for the first time to her) and the objections raised by the parties. It is correct that the objection was ultimately decided, but this application is not about trying to unsettle that outcome. It is about the Chairperson's handling of that objection and how this impacts upon her impartiality.

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122 The respondent's attempt to reframe principled objections to procedural irregularity as resistance to the Commission's mandate answers a case that is not made and should be rejected.

Ad paragraphs 82 to 84

123 I have addressed the allegations in these paragraphs earlier in this affidavit. They are denied.

Ad paragraphs 85 to 86

124 It is accepted that the issuing of a Rule 3.3 notice does not, in itself, render a person a "party" to the Commission's proceedings, nor does it convert the Commission into an accusatorial forum. That, however, is beside the point. The recusal application does not depend on whether I am formally described as a "party", but on whether I am an interested and affected person whose rights, reputation, and conduct are directly implicated by the Commission's work.

125 Where a Commission's findings and recommendations may materially affect an individual, the constitutional requirement of an impartial decision-maker applies irrespective of formal labels. The inquisitorial nature of the process does not diminish that requirement.

Ad paragraphs 87 to 90

126 I have addressed the allegations in these paragraphs earlier in this affidavit. They are denied.

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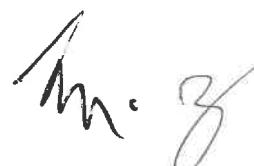
127 It is unclear what is meant with the assertion that the decision to grant Adv Varney permission to lead his own witnesses is in line with previous submissions by the applicants' legal representatives. This is in any event denied. The applicants' written submissions – which served before the Commission together with those of the NPA and the Ministers, were clearly against the leading of witnesses by own legal representatives as a default position. The applicants especially objected to a wholesale leading of own witnesses – as this severely compromises the Commission's fact finding mission.

Ad paragraph 91

128 I note the contents of this paragraph. The issue is not whether the Chairperson was legally compelled, in the abstract, to furnish reasons for a directive issued under Rule 3.1. The issue is whether, in the particular context of this matter, where serious objections grounded in conflict of interest and procedural fairness were raised, the refusal to engage with those objections in a reasoned manner contributes to a reasonable apprehension of bias.

129 A recusal enquiry is concerned with appearance and perception, not formal compliance with minimum procedural entitlements. The absence of reasons, when coupled with the endorsement of an irregular arrangement and the failure to interrogate material objections, forms part of the cumulative factual matrix relied upon in support of this application.

130 The respondent's reliance on the absence of a strict duty to give reasons therefore does not answer the case advanced in this application.

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Ad paragraphs 92 to 96

131 I have addressed the allegations in these paragraphs earlier in this affidavit. They are denied.

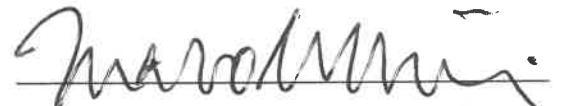
Ad paragraphs 96

132 The absence of support from other interested parties is irrelevant to the determination of a recusal application, which turns on the objective application of the reasonable apprehension of bias test to the facts advanced by the applicants and not on the number or identity of parties who elect to support the relief sought.

133 The inference that the application is “devoid of merit” on that basis is denied.

CONCLUSION

134 In light of the above, I pray for the relief set out in the Notice of Motion.


THABO MVUYELWA MBEKI

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposed before me at Johannesburg on this the 9th day of **January 2026**, and that the provisions of the regulations contained in the Government Notice R1258 of the

21st of July 1972, as amended, and Government Gazette Notice R1648 of the
19th of August 1977, as amended, have been complied with.

H. J. van der Walt
COMMISSIONER OF OATHS
ZWANEYANDAZWANE
PRACTISING ATTORNEY
EX OFFICIO COMMISSIONER OF OATHS
KOIKANYANG HOUSE
47, 7TH STREET
HOUGHTON ESTATE, JOHANNESBURG

ANNEXURE "TMMI"



The Secretary:

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

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

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Our Ref: Mr I Armoed/ Aneesa
Your Ref:

Date: 24 October 2025

Email: ivine@boqwanaburns.com
lutho@boqwanaburns.com
thembelihle@boqwanaburns.com
aneesa@boqwanaburns.com

Dear Sir

RE: NOTICES IN TERMS OF RULE 3.3 – REQUEST FOR DOCUMENTS

1. As you are aware, we act for the following interested parties before the Judicial Commission of Inquiry into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of the Truth and Reconciliation Commission cases ("the Commission"):

1.1 Former President, Mr Thabo Mbeki;

1.2 Former Minister of Justice and Constitutional Development, Ms Brigitte Mabandla;

1.3 Former Minister for Intelligence Services, Mr Ronald Kasrils;

1.4 Former Minister of Security and Safety, Mr Charles Nqakula; and

1.5 Former Acting Minister of Justice and Constitutional Development, and current Speaker of the National Assembly, Mrs Thoko Didiza.

2. On 9th September; 8th October and 10th October 2025, the Commission served notices in terms of Rule 3.3 of the Rules of the Commission on the Former President and Ministers ("the notices").

2.1 The notices set out allegations of political interference in the investigation and prosecution of Truth and Reconciliation Commission cases ("the TRC cases") against the Former President and the Ministers.

2.2 The TRC cases seem to refer to cases that had been referred by the TRC to the National Prosecuting Authority ("NPA") for prosecution where amnesty had not been granted to perpetrators by the TRC.¹

2.3 The allegations contained in the notices were extracted by the Commission from the founding affidavit 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) which is before the Gauteng Division of the High Court, Pretoria ("the Calata application").

3. As a result of the extraction of allegations from the affidavit, it is not always clear what the extent of the complaint is against the Former President and Ministers.²

¹ Calata Founding Affidavit (FA) at pp001-48 – 001-54 from para 95-111.

² See for instance Rule 3.3 notice issued to the Former President, extracted paras 289 onwards where the special dispensation for political pardons is discussed. Rule 3.3. notice issued to Former Minister Nqakula para 234.

Moreover, save for the annexures to the founding affidavit in the Calata application, the notices do not attach pertinent documents that relate to some of the allegations against the Former President and Ministers.

4. Significantly, the notices did not attach any minutes and other records of meetings that were allegedly held by:

4.1 Ministers with the NPA's Former National Director of Public Prosecutions, Mr Vusi Pikoli (or his officials) in 2006,³ 2007;⁴ and

4.2 A delegation of the South African Defence Force Generals with, *inter alia*, the Former President,⁵ and the Former Minister of Security and Safety.⁶

5. The notices also do not attach the dockets that are described in the extracted paragraph 397 of the Former President's notice as the "dockets for the prosecution of the top ANC members, including President Mbeki."
6. Soon after the Rule 3.3 notices were received, the Former President and Ministers asked the Commission and were allowed more time to file statements in response to the allegations against them.⁷ The President and Ministers appreciate the

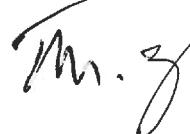
³ Rule 3.3 notice issued to the Former President, Former Ministers Nqakula and Mabandla, and Former Acting Minister Didiza, extracted para 224-227.

⁴ Rule 3.3 notice issued to the Former Minister Mabandla, extracted para 247, 254, 262-264; Rule 3.3 notice issued to the Former Minister Kasrils, extracted para 262-264; Rule 3.3 notice issued to the Former President, extracted para 264 and subparas;

⁵ Rule 3.3 notice issued to the Former President, extracted para 379 and subparas, extracted para 379-386.

⁶ Rule 3.3 notice issued to the Former Ministers Kasrils, extracted para 384.

⁷ The correspondence detailing the requests and responses can be made available on request.



indulgence and are working in earnest (assisted by their legal team) to produce the statements as soon as possible.

7. In order to ensure that the statements address the complaints in full and given that the Former President and Ministers exited their roles in the Executive almost two decades ago, we ask that the Commission provide us with any pertinent documents that may assist with crystallising the extent of the complaints against the Former President and Ministers – in particular, but without any limitation, those identified above. For example, where reference has been made to meetings or documents (as noted in paras 4 and 5 above), if the Commission has the relevant documents, we ask that the documents be made available to us as soon as possible. If not, but the Commission has information on where the documents are located, indication of whether the Commission is obtaining the documents from such sources, and to provide them to our clients in due course.
8. We would also appreciate any contemporaneous records that the Commission may have, sourced from relevant Departments/Offices and/or Parliament and/or proceedings that help to shed light on the allegations contained in the notices.
9. We look forward to your response.

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Yours faithfully



Boqwana Burns Inc.



ANNEXURE "TMM 2"



The Secretary:

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

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

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Gqeberha & Plettenberg Bay



Our Ref: Mr I Armoed/ Aneesa

Your Ref:

Date: 03 November 2025

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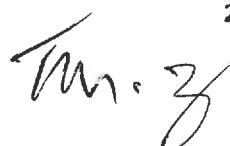
Dear Sir

RE: NOTICES IN TERMS OF RULE 3.3 – REQUEST FOR DOCUMENTS

1. We refer to the above matter, our letter dated 24 October 2025, and your subsequent correspondence addressed to former President Mbeki and former Minister Mabandla dated 29 October 2025. We refer to Mr Mbeki and Mrs Mabandla as "our clients" in this letter.
2. In your latest letter, the Commission requests that our clients provide information concerning any decisions, discussions or policies relating to the investigation and prosecution of Truth and Reconciliation Commission ("TRC") cases. You further request that they provide any documents to which they had access during their

tenure in government – including memoranda, correspondence, meeting minutes, and other records relevant to TRC matters referred for investigation or prosecution

3. Our clients have been out of government service for nearly two decades. All official documents and records in their possession at the time were left with their respective departments upon their departure. It has never been open to them to retain or remove government documents into private custody. This is precisely why, in our letter of 24 October 2025, we requested from the Commission copies of the information and materials relied upon in issuing the Rule 3.3 notices, such as the minutes of meetings or other documentary sources that formed the basis of the Commission's decision to issue Rule 3.3 notices.
4. While the Commission undertook to revert to us regarding that request, no such response has been received. Instead, the Commission has issued further correspondence to our clients seeking the very same documents and information that we, on their behalf, have already asked the Commission to provide. Respectfully, it should have been clear from our prior correspondence that our clients do not possess any documents or records capable of assisting the Commission in this regard.
5. We also refer to the Commission's letter of 29 October 2025 to Mrs Mabandla, in which the Commission acknowledges that it intended, but failed, to dispatch its Request for Information letter to her on 15 October 2025. The Commission further concedes that, as a result of this administrative error, Mrs Mabandla's name was

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erroneously included among those Ministers alleged to have failed to cooperate with the Commission's request for information. The Commission's apology for this oversight, and its stated intention to issue a corrective media statement, are noted.

6. However, the letter referred to as the "original" request remains undated. If it pre-dates our 24 October 2025 correspondence, it is unclear why the Commission did not reference it in its reply to our earlier request. This omission adds to our clients' concern regarding the procedural handling of this matter.
7. Our clients remain willing to cooperate fully with the Commission and to assist its work to the extent possible. However, the current approach has rendered meaningful engagement difficult.
8. Lastly, we request that the Commission provide us with a copy of:
 - 8.1 The public statement that referred to Mrs Mabandla's alleged non-cooperation; and
 - 8.2 The corrective media statement which the Commission indicated it would issue to rectify the error.
9. We look forward to your response.

A handwritten signature in black ink, appearing to read "Thm. S".

Yours faithfully



Boqwana Burns Inc.

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Mr. Z

ANNEXURE "TMM3"



The Secretary:

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

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

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Also @ King William's Town,
Gqeberha & Plettenberg Bay



Our Ref: Mr I Armoed/ Aneesa
Your Ref:

Date: 07 November 2025

Email: irvine@boqwanaburns.com
lutho@boqwanaburns.com
thembelihle@boqwanaburns.com
aneesa@boqwanaburns.com

Dear Sir

RE: WITNESS STATEMENTS IMPLICATING OUR CLIENTS

1. We refer to our letter of 03 November 2025 and the Commission's subsequent response on even day. In ours, we requested that the Commission provide us with witness statements and documents of the Calata Group's witnesses.
2. In response to our request the Commission referred us to correspondence between it and Webber Wentzel, dated 10 October 2025 and 13 October 2025, respectively.
3. The Commission's letter advised Webber Wentzel that:

M. Z

"3. The documents received under the cover of your letter dated 10 October 2025 are documents that were made for proceedings in other fora. The Commission requests that the statements be made to the Commission. It will suffice if the statements made to the Commission have the various affidavits as annexures whose contents are under oath." (own emphasis).

4. The response from the Webber Wentzel was to the effect that:

"2. We also refer to your letters of 10 October 2025 requesting that the witness statements be directed to the Commission and that the statements address the terms of reference of the commission.

3. Your letter indicates that confirmatory affidavits confirming the contents of their earlier statements will suffice. We shall gladly comply with the Commission's request.

4. We will accordingly file confirmatory affidavits in respect of the 8 witnesses we will lead at the first hearing of the Commission (referred to in paras 4 and 5 of our letter to you dated 29 September 2025).

5. As per the discussion between our counsel Mr Varney and the Commission's evidence leader, Mr Semenya SC we will also indicate

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Tm. y

which portions of the filed statements we will rely on for purposes of addressing the terms of reference.

6. We also confirm that Mr Varney indicated to Mr Semenya SC that some of our witnesses are located outside of Johannesburg, and one is based in Germany. Mr Semenya SC indicated that it was permissible to file these confirmatory affidavits prior to the commencement of the first hearing on 10 November 2025."
5. The above interaction makes clear that the Calata Groups' witnesses will not produce fresh statements setting out the allegations against our clients. There is an undertaking to "indicate which portions of the filed statements we will rely on for purposes of addressing the terms of reference" – but we have not received such document in relation to all eight witnesses.
6. Our clients are severely prejudiced by this. As matters stand, they do not know the full extent of the allegations against them as regards each of the Calata Group's witnesses, or any other witness for that matter. It will be difficult for them to produce witness statements that speak to the allegations when they do not know what the allegations are, as expressed by each of the witnesses. They will also not be able to assess which of the witnesses they should cross examine (on application to the Commission).



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7. It is also not reasonable to expect the legal team to trawl through all the affidavits in the Calata High Court application to try and make out what the substance of the complaint is against our clients. It is also not practically possible to do so bearing in mind the many proceedings referred to in the Calata application in the High Court.
8. In the circumstances, we require, at the very least, a statement or affidavit for each witness with the allegations against our respective clients. This applies to all witnesses who have made allegations against our clients.
9. We would urge the Commission to have regard to Rule 6 of the Commission's rules which deals with witness statements and affidavits. The reliance on extant affidavits used in other forums and proceedings does not comply with what the Rule envisages.
10. We look forward to your response as soon as possible.

Yours faithfully



Boqwana Burns Inc.

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The Secretary:

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

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

Johannesburg Office

1st Floor, 357 Rivonia Boulevard
Rivonia
P O Box 3056
Rivonia, 2128
Johannesburg
Tel: +27 (0) 11 234 0648
E-mail:

Also @ King William's Town,
Gqeberha & Plettenberg Bay



Our Ref: Mr I Armoed/ Aneesa
Your Ref:

Date: 09 December 2025

Email: irvine@boqwanaburns.com

lutho@boqwanaburns.com

thembelihle@boqwanaburns.com

aneesa@boqwanaburns.com

Dear Madam

RE: WITNESS STATEMENTS IMPLICATING OUR CLIENTS

1. We refer to our letters to the TRC Commission of Inquiry ("the Commission") dated 03 November 2025 and 07 November 2025; wherein we requested that the Commission provide us with witness statements and documents of the Calata Group of Witnesses that will be relied on by the Commission.
2. In response to our request of 07 November 2025, you advised that our concerns will be forwarded to Webber Wentzel, the attorneys of record for the Calata Group of Witnesses for their response. We once again wish to put on record that we find this approach undesirable as the Evidence Leaders seems to have outsourced the responsibility to some group of witnesses. We reiterate that we

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are responsive to the Commission and Evidence Leaders and not Webber Wentzel.

3. We further refer to our Mr Boqwana's virtual meeting with the Commission's Chief Evidence Leader, Adv Ishmeal Semenza SC, where he requested for the filing of the witness statements to be made on or before the 12 January 2026. This was also discussed with our Counsel and below is our response to both of the above points.
4. As directed by the Commission, we proceeded with the request. In response to our request, Webber Wentzel did not provide witness statements, rather it:
 - 4.1. provided a list of their witnesses; and
 - 4.2. reference to various paragraphs from affidavits filed in the High Court for purposes of the litigation before that Court ("Calata litigation"), that they would be relying upon.
5. It must be placed on record that this approach is unhelpful in preparing our clients' statements for the Commission; as we simply do not know the case we must answer in relation to our clients. Treating paragraph references from different proceedings as a substitute for coherent witness statements is, at best, an untenable approach and makes it difficult for clients to be convinced of their participation in this matter. For example:

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5.1 Webber Wentzel has advised that Mr Lukhanyo Calata intends to rely on his entire founding affidavit in the Calata litigation. You will appreciate that we are familiar with that affidavit, given that our clients sought to intervene in the High Court proceedings. Our understanding is that that Affidavit seeks to justify a different relief than what the Commission seeks to achieve. So, the Affidavit is wholly inadequate.

5.2 It is the Commission that requires our client's attendance and must have on its own satisfied itself of the basis for our client's appearance. To this end we need the Commission's own questions and specific issues that our client are required to address.

5.3 In relation to Mr Michael Schimdt, we are advised that the Commission will rely on paragraphs 382 to 394 of the Calata founding affidavit and Annexure FA59. For clients to be required to answer on the opinions expressed in books is most undesirable. We have nevertheless looked at relevant extracts, with reference to specified paragraphs:

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*

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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 Niel 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 (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).

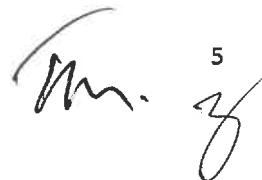
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385 On 5 May 2020, former Minister of Intelligence Kasrils emailed Schmidt regarding the ANC-SADF talks advising that he had 'no knowledge of virtually all the meetings and developments arising from such talks.' Schmidt no longer has a copy of this 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. Kogi, apparently empowered by Mr Mbeki, arranged for a meeting at his house in Johannesburg. That meeting was in the form



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of discussions followed by a dinner hosted by Mr Kogi. 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.....

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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 Nqakula and thereafter with you on 17 February 2003."

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 *Bubenzer writes that Geldenhuys and Kogi 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,*

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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.

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

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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 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.

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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.

6. It is not clear if the Commission or the Evidence Leaders have scrutinised this and determine its veracity and then questions to be answered by clients.
7. The Commission will appreciate that our clients have been out of government for nearly twenty years. The extract referred to above, together with others, makes reference to various meetings, written submissions, and detailed proposals. Yet none of these documents, including meeting minutes, have been provided to us, despite our repeated requests.
8. Our clients remain willing to assist the Commission. However, for us to meet the Evidence Leaders' deadline of 12 January 2026, we require specific questions to each of our clients. This is precisely why, from the outset, we requested written statements from the Commission together with the relevant documents in the custody of government. You will agree that it is neither desirable nor fair for our clients to be expected to guess the case they must meet; such an approach is highly prejudicial.

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9. In light of the above, we must again insist on receiving written statements from the Commission, together with supporting documents, setting out clearly the case our clients are required to answer.
10. To this end we wish to restate our request, that ***you provide us with specific questions/issues/concerns/information that the Commission seek to be addressed by clients, individually and collectively.*** For instance, allegations against Ms Didiza relates to a meeting that allegedly took place at the late Minister Zola Skweyiya's house. We require the minute of this meeting. This will assist us to provide the statement on behalf of Ms Didiza.
11. For avoidance of confusion and misunderstanding we request that the Commission and Evidence Leaders direct any correspondence with regard to this matter to ourselves and place any request including that of dates in writing.

Yours faithfully



Boqwana Burns Inc.





07 November 2025

BOQWANA BURNS INC.

Boqwana House
84 – 6th Avenue
Newton Park, 6045

Your ref: Mr I Armoed/Aneesa

Email: irvine@boqwanaburns.com
aneesa@boqwanaburns.com

Dear Sir/Madam,

RE: FILING OF LISTS OF WITNESSES AND SUBMISSIONS ON IMPLICATED PERSON BY CALATA AND TWENTY-FIVE OTHERS

1. We acknowledge receipt of your letter dated 7 November 2025 wherein you raise concerns of prejudice because of not having received the statements from the Calata Group of Witnesses.
2. We will forward all these concerns you raise in your letter to Webber Wentzel representing the Calata Group of witness for their response, upon which we will revert to you.

Yours faithfully

Adv AM Thokoa
Secretary

ANNEXURE 'TMM 6'

WEBBER WENTZEL

in alliance with > **Linklaters**

Adv AM Thokoa
Secretary: Commission of Inquiry, Stopped TR
and/or Prosecutions
Sci-Bono Complex
Cnr Miriam Makeba and Helen Joseph
Newtown
Johannesburg

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Docex 26 Johannesburg
T +27 (0) 11 530 5000
www.webberwentzel.com

By email: secretary@trc-inquiry.org.za

CC: Boqwana Burns
1st Floor, 357 Rivonia Boulevard
Rivonia
Rivonia, 2128
Johannesburg

By email: irvine@boqwanaburns.com,
lutho@boqwanaburns.com,
thembelihle@boqwanaburns.com &
aneesa@boqwanaburns.com

Your reference	Our reference	Date
	A Thakor / N Thema / J Venter / LM Doubell / 4017862	7 November 2025

Dear Ms Thokoa

LETTER OF BOQWANA BURNS

1. We confirm receipt of the Commission's letter dated 7 November 2025 and the accompanying letter of Boqwana Burns.

Ad paragraph 5 of the Bogwana Burns letter

2. The portions of the affidavits drawn from the Calata affidavit which our clients' witnesses will rely on to address the Commission's terms of reference include:

1 LIKHANYO BRUCE MATTHEWS CALATA

Calata Founding Affidavit – his whole affidavit

Confirmatory Affidavit of Lukhanyo Bruce Mathews Calata

2. THEMBSIHLLE PHUMELELE SIMELANECalata Founding Affidavit, paras 173, 252, 333–341, 541Confirmatory Affidavit of Thembisile Phumelele Nkademeng

Reference might also be made to:

Founding and in camera Affidavits, Case No: 35554/2015**3. YASMIN LOUISE SOOKA**Calata Founding Affidavit, paras 95–103, 484–485, 493–498, FA7Confirmatory Affidavit of Yasmin Sooka**4. DUMISA BUHLE NTSEBEZA**Calata Founding Affidavit, paras 95–103, 484–485, 493–498, 515–520, FA6Confirmatory Affidavit of Dumisa Buhle Ntsebeza**5. OLE BUBENZER**Calata Founding Affidavit, paras 104–105 114, 183, 191, 378–381, 388–389, 397–399, FA16Confirmatory Affidavit of Ole Bubenzer**6. MICHAEL SCHMIDT**Calata Founding Affidavit, paras 382–395, FA59Confirmatory Affidavit of Michael Schmidt**7. ANTON ROSSOUW ACKERMANN**Calata Founding Affidavit, Multiple references in paras 62 – 316, FA8Confirmatory Affidavit of Anton Rossouw Ackermann**8. VUSUMZI PATRICK PIKOLI**Calata Founding Affidavit, Multiple references in paras 115.6 - 536, FA22, FA33Confirmatory Affidavit of Vusumzi Patrick PikoliAd paragraphs 6 and 7 of the Boqwana Burns letter

3. During September and October 2025, the Commission issued comprehensive Rule 3.3 notices to the implicated persons, including Mr Armoed's clients. These notices informed them of the allegations or mentions which implicate or may implicate them in respect of the

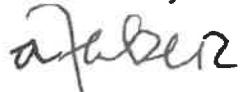
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WEBBER WENTZELin alliance with > **Linklaters**

Page 3

subject matter set out in the Commission's terms of reference. These are also available on the Commission's website.

Yours faithfully

**WEBBER WENTZEL****Asmita Thakor****Partner**

Direct tel: +27 11 530 5875

Email: asmita.thakor@webberwentzel.com

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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

CONFIRMATORY AFFIDAVIT

I, the undersigned,

BRIGITTE SYLVIA MABANDLA

do hereby make oath and say:

- 1 I am an adult female and former Minister of Justice and Constitutional Development from 29 April 2004 to 25 September 2008.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the replying affidavit deposed to by former President, **Thabo Mbeki** and confirm that the averments therein, as far as they relate to me.



BRIGITTE SYLVIA MABANDLA

NC 1

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and deposed before me at JOHANNESBURG on this the 12th day of **January 2026**, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

FULL NAMES: **NOSIPHO CONNIE JAFTA**
CAPACITY: PRACTISING ATTORNEY RSA
COMMISSIONER OF OATHS
ADDRESS: UNIT 7 THE GUILD HOUSE
239 BRONKHORST STREET, BROOKLYN 0181
TEL: 012 004 0424

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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

CONFIRMATORY AFFIDAVIT

I, the undersigned,

RONNIE KASRILS

do hereby make oath and say:

- 1 I am an adult male and former Minister of Intelligence Services from 27 April 2004 to 25 September 2008.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the replying affidavit deposed to by former President, **Thabo Mbeki** and confirm that the averments therein, as far as they relate to me.



RONNIE KASRILS


1

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposed before me at JOHANNESBURG on this the 12th day of **January 2026**, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

FULL NAMES: **NOSIPHO CONNIE JAFTA**
PRACTISING ATTORNEY RSA
CAPACITY: COMMISSIONER OF OATHS
UNIT 7 THE GUILD HOUSE
ADDRESS: 239 BRONKHORST STREET, BROOKLYN 0181
TEL: 012 004 0424



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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe**

CONFIRMATORY AFFIDAVIT

1, the undersigned,

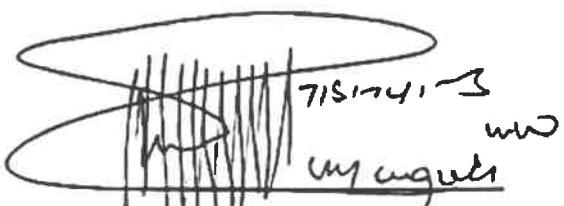
THOKO DIDIZA

do hereby make oath and say:

- 1 I am an adult female and former Acting Minister of Justice and Constitutional Development, serving as such on or about September 2006.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the replying affidavit deposed to by former President, Thabo Mbeki and confirm that the averments therein, as far as they relate to me.

B. T. D.S.J
THOKO DIDIZA

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and deposed before me at Rustenburg on this the 08 day of January 2026, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.


7/15/2026
My signature
COMMISSIONER OF OATHS



FULL NAMES: Leanne Myles
CAPACITY: WCO
ADDRESS: 03 Tracy Street
Pta

**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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

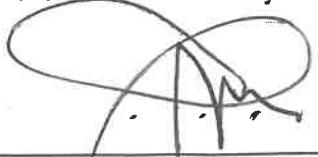
CONFIRMATORY AFFIDAVIT

I, the undersigned,

CHARLES NQAKULA

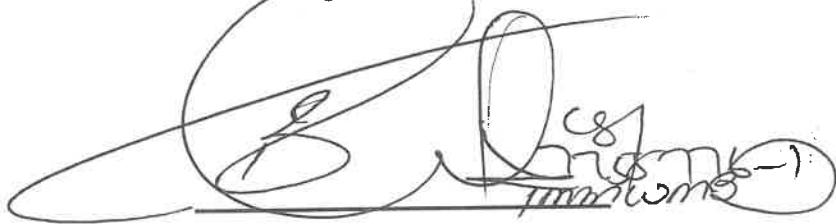
do hereby make oath and say:

- 1 I am an adult male and former Minister of Safety & Security from 07 May 2002 to 25 September 2008.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the replying affidavit deposed to by former President, **Thabo Mbeki** and confirm that the averments therein, as far as they relate to me.



CHARLES NQAKULA

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposed before me at Bedfordview on this the 12. day of **January 2026**, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

FULL NAMES: THUCANI Ntombi

CAPACITY: Constable

ADDRESS: 60 Van Bueren Rd.

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE/C SHIFT
2026 -01- 12
BEDFORDVIEW
SOUTH AFRICAN POLICE SERVICE

**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 the matter:

**THE RECUSAL APPLICATION OF THE COMMISSION CHAIRPERSON JUSTICE
YSIS KHAMPEPE**

FILING SHEET – REPLYING AFFIDAVIT TO THE CALATA GROUP

THE APPLICANT PRESENT HEREWITH FOR FILING:

1. The Applicant's Replying Affidavit to the Calata Group's Answering Affidavit in respect of the Recusal Application of the Commission Chairperson Justice Sisi Khampepe.

DATED AND SIGNED AT SANDTON ON THIS THE 14TH JANUARY 2026.

A handwritten signature in black ink, appearing to read "G. A. G." or a similar variation, is placed here.

BOQWANA BURNS INCORPORATED
Attorneys for the Applicants
1st Floor, 357 Rivonia Boulevard
Rivonia, Sandton
Tel. (011) 234 0648
Email: irvine@boqwanaburns.com
lutho@boqwanaburns.com
Our ref: VA/CV/EMPLOY/384/07/25

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

ANDTO: **ALL INTERESTED PARTIES**
C/O THE SECRETARY OF THE COMMISSION
EMAIL: secretary@trc-inquiry.org.za

**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 the matter for the recusal application of the Commission Chairperson Justice Sisi Khampepe

REPLYING AFFIDAVIT IN RESPONSE TO THE CALATA GROUP

Recusal of Commission Chairperson, Justice Sisi Khampepe

I, the undersigned,

THABO MVUYELWA MBEKI

do hereby make oath and state that:

- 1 I am an adult, and the former Deputy President (1994 until 13 June 1999) and President (14 June 1999 to 24 September 2008) of the Republic of South Africa.
- 2 Unless otherwise stated or indicated by the context, the facts contained in this affidavit are within my personal knowledge and are to the best of my knowledge and belief both true and correct. Where I make submissions of a legal nature, I do so on the advice of my legal representatives. I accept such advice as correct.
- 3 I depose to this affidavit on my own behalf, as well as on behalf of Mrs Brigitte Mabandla, Mr Charles Nqakula, Mrs Thoko Didiza and Mr Ronnie Kasrils (collectively, "the former members of the executive"). Their confirmatory affidavits are filed together with the replying affidavit to Adv Semenya SC's answering affidavit.

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- 4 I have read the answering affidavit deposed to by Ms Asmita Thakor ("Thakor") on behalf of the Calata Group in answer to my application for the Chairperson's recusal. Save insofar as any allegation contained therein is expressly admitted herein, the allegations are denied.
- 5 The purpose of this affidavit is to respond thereto.
- 6 The Calata Group's answering affidavit does not materially advance the opposition to this application beyond what is already contained in the answering affidavit of Adv Semenya SC. Its principal contentions largely mirror those raised by Adv Semenya SC, namely allegations of undue delay, opportunism, and the asserted irrelevance of the Chairperson's prior institutional roles.
- 7 Those contentions have been comprehensively addressed in my replying affidavit to Adv Semenya SC, which I rely upon and incorporate by reference. I deal below only with those aspects of the Calata Group's answering affidavit which call for specific response or clarification. I do not repeat the contents of my founding affidavit, which stand unless expressly qualified or supplemented herein.

THE COMMON CAUSE FACTS

- 8 A comprehensive reading of the Calata Group's answering affidavit and my founding affidavit reveals that the following facts and circumstances are common cause:

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SS

- 8.1 Justice Khampepe was appointed as a TRC Commissioner in December 1995. Her tenure expired in 2001.
- 8.2 She served as a member of the TRC Amnesty Committee from 1996 until 2001. The TRC Amnesty Group decided whether to grant or refuse amnesty to the various persons who applied for it.
- 8.3 As a TRC Commissioner, Justice Khampepe formed part of the panel that concluded that the African National Congress ("ANC") had committed gross human rights violations in the course of its political activities during the armed struggle.
- 8.4 Some participants before the Commission were involved in the TRC process in which Justice Khampepe participated as a Commissioner. This include/s the Calata Group.
- 8.5 The TRC recommended prosecution of TRC cases. Justice Khampepe was directly involved in making the findings and recommendations regarding the prosecutions of some of those who were declined amnesty.
- 8.6 Justice Khampepe served as the Deputy National Director of Public Prosecutions under then National Director of Public Prosecutions, Advocate Bulelani Ngcuka from September 1998 to December 1999. During this period, the Human Rights Investigation Unit had been established and was operating within the NPA. The Unit's mandate was to review TRC amnesty records, investigate apartheid-era human rights

Mr. SS

violations and make recommendations on the prosecution of TRC matters. The precise nature of Justice Khampepe's involvement in the Unit is unclear.

8.7 The timeline shows that there was an overlap in the senior roles that Justice Khampepe held with the TRC (1995 – 2001) and the NPA (1998 – 1999). The Commission is mandated to investigate political interference that allegedly started in 2003.

8.7.1 When my legal representatives asked for witness statements from the Calata Group, they were consistently sent back to the founding papers in the high court. The starting point of the Calata Group's case in those papers is not 2003. The Calata Group alleges that between 1998 and 2004, meetings were held between former police and army generals and representatives of the ANC to discuss what could be done to avoid future prosecutions of TRC cases. The Calata Group considers these discussions to be the genesis of the interference that they allege to have commenced in 2003. They have requested the Commission to probe these alleged meetings regardless of the starting date in the Terms of Reference. The period of 1998 to 2001 is thus directly relevant to the Commission's Terms of Reference.

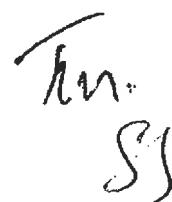
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8.8 Justice Khampepe was appointed as Chairperson of the Commission and the presidential proclamation announcing her appointment and establishing the Commission was issued on 29 May 2025. This Commission is tasked with investigating, amongst other things, whether, why, and to what extent and by whom, efforts or attempts were made to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases. The Commission must also investigate whether any members of the NPA colluded in attempts to influence or pressure them.

8.9 While the Commission was established in May 2025, it was only on 25 September 2025 and 21 October 2025 that the applicants were issued with notices in terms of Rule 3.3 of the Commission's Rules.

8.10 The Commission's Rules , especially Rule 3.1, stipulates that subject to anything to the contrary contained in these Rules or to the Chairperson's directions in regard to any specific witness, the Commission's Evidence Leader bears the overall responsibility to present the evidence of witnesses to the Commission.

8.11 On 29 September 2025, a previously undisclosed arrangement was concluded between Adv Semenya SC and Adv Varney, counsel for the Calata Group, without the knowledge of the other parties. In terms of this arrangement, Adv Varney would lead the evidence of the Calata witnesses instead of the Commission's appointed evidence leaders.

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8.12 On 27 October 2025, a prehearing was held which was attended by the majority of the legal representatives of the interested parties. At this meeting, the private arrangement between Adv Semenya SC and Adv Varney was made known to all the parties present at the meeting (not all parties had access to Sharepoint where an earlier letter was apparently shared). This arrangement prompted questions and objections from, inter alia, the NPA and the South African Police Services' legal teams. The parties also requested disclosure by the Commission of the correspondence containing the Calata Group's request and the approval by the Commission. The parties were then requested to raise their objections and make submissions regarding the leading of witnesses by legal representatives instead of the Evidence Leaders.

8.13 After the pre-hearing of 27 October 2025, the Commission shared a letter dated 18 September 2025 that was addressed to Justice Khampepe by the Calata Group in which the Calata Group drew attention to the potential conflict of interest concerning Adv Semenya SC and suggested that, in the interest of public perception of partiality, he not be involved in any deliberations, leading or cross examination of witnesses in relation to the amendments to the NPA's prosecution policy.

8.14 Justice Khampepe responded on 19 September 2025, saying that *"having considered the concerns of your client and having heard Adv Semenya SC's response, I am minded going with the solution you*

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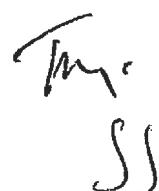
propose. The concerns . . . are noted. I make no decisions on them. I will have another member of the Evidence Leaders deal with this aspect".

8.15 Despite Justice Khampepe's directive, on 13 November 2025, Adv Semenya SC interviewed the former Acting National Director of Public Prosecutions and in the questioning, traversed aspects of the Prosecution Policy and related matters that formed the subject of the conflict that the Calata Group had raised.

8.16 A formal application for the recusal of Adv Semenya SC was launched by the Department of Justice and the NPA. Mr Semenya SC's participation in the interview of the former NDPP was raised by the NPA in their recusal application. The recusal application was argued before the Commission.

8.16.1 It is important to highlight that, while the Calata Group initially abided the Chairperson's decision in that recusal application, they attested – under oath – that: (a) Adv Semenya SC did question the witness, despite his denial under oath that he did so; (b) Adv Semenya SC's questioning contravened Justice Khampepe's directive and; (c) Adv Semenya SC ought not to have been involved in the questioning of the witness.

8.16.2 Later, in their written submissions, the Calata Group arrived at the conclusion that it was time "for Semenya to stand down as an evidence leader". They relied on two reasons. Firstly, by

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participating in the interview with Dr Ramaite SC, former Acting NDPP, Adv Semenya SC placed himself in breach of the Chairperson's ruling. Second, they "no longer believe that Semenya is in a position to 'efficiently perform' his function as evidence leader." In their view, the Chairperson's directive had the effect that Adv Semenya SC was excluded from a crucial part of the Commission's work. They were also concerned that Adv Semenya SC would inadvertently breach the directive again, and disrupt the Commission's work.

8.17 The parties were also invited to set out objections and written submissions to the leading of witnesses by legal representatives rather than the Evidence Leaders. Several interest parties, including the applicants, objected to the leading of witnesses by legal representatives. The applicants and some of the interested parties objected and filed written submissions, as did some of the interested parties. Their position was to the effect that the default position was that Evidence Leaders had the primary responsibility to lead witnesses – but in exceptional circumstances a party could apply to have their evidence led by their own legal representatives. Blanket approval was impermissible.

8.18 On 11 November 2025, the Calata Group, through their attorneys wrote to the parties and highlighted that, inter alia, in her (Justice Khampepe's) role as the Deputy National Director of Public Prosecutions, she apparently "played a role in the Human Rights Investigation Unit (HRIU)

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established by then NDPP Bulelani Ngcuka to advise him on how to handle the cases referred by the NPA to the TRC."

- 8.19 The objection to the leading of witnesses was set down for oral argument on 28 November 2025. However, on the day of the hearing, the parties agreed to an order. The crux of the order was that the Chairperson would consider the request by the Calata Group and the objections by the parties, and then issue a ruling.
- 8.20 Justice Khampepe was required by the Commission's rules and regulations, and the imperatives of natural justice to properly investigate the existence, nature and proprietary of the previously undisclosed arrangement of Adv Semenya SC and Adv Varney in respect of the leading of witnesses. She was required to determine whether there was a lawful request for deviation from Rule 3.1, consider whether the arrangement had jeopardised procedural fairness and ensure whether there was disclosure of the relevant correspondence to all parties pursuant to the arrangement.
- 8.21 On 2 December 2025, Justice Khampepe issued a ruling in which she granted the Calata Group permission to lead eight (8) of their witnesses, without providing any reasons. The applicants' attorneys request for reasons was summarily refused.
- 8.22 On 4 December 2025, Justice Khampepe issued a ruling refusing the recusal application.

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9 Despite these common cause facts, the Calata Group contends that the applicants brought the application with the calculated purpose to disrupt or derail the operations of the Commission and amounts to an abuse of the Commission's process. Their primary reason is that the recusal application was not made within a reasonable time, that the delay is inordinate, inexcusable and unexplained. Their second reason is that the two grounds of complaint do not demonstrate that there can be a reasonable apprehension that the Chairperson would fail to bring an impartial mind to bear.

10 Nearly three decades ago, in 1999, our highest court delivered one of the most significant judgments on the question of recusal of a judge where perceived bias was alleged. In that judgment, which is commonly referred to as the SARFU judgment, and relying on a judgment over five decades old, the Court acknowledged that "*a litigant and her or his counsel who find it necessary to apply for the recusal of a judicial officer has an unenviable task*". This sentiment holds true for this application. The applicants did not lightly bring this recusal application.

11 In the same judgment, the Constitutional Court sounded an important warning about perceptions where recusal applications are brought. The Court said that "the propriety of [an applicant's] motives *should not be lightly questioned*." The Court explained it is counsel's duty to advance the grounds without fear, where such grounds are reasonable. His or her application must be dealt with in accordance with the prevailing legal principles.

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12 An enquiry into abuse of process depends on the facts and circumstances of each case. We have set out the common cause facts in paragraphs 8.1 to 8.20. Based on these facts, and on the application of the correct legal principles on recusal, including delay in bringing a recusal application, there is simply no basis to find that the application is an abuse of process.

THE ALLEGED DELAY

13 The applicable legal test for recusal is not contentious. The objective test is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel.

14 The Calata Group say in their answering affidavit that delay in instituting a recusal application despite an earlier opportunity to do so implicates the interests of justice. The interests of justice is a fact based enquiry. The question is whether it is in the interests of justice to permit a party, having knowledge of all the facts upon which recusal is sought, to wait (until an adverse judgment on the merits) before raising the issue of recusal. The factors relevant to this enquiry include, but are not limited to, the extent and the cause of delay, the prejudice to other litigants, the reasonableness of the explanation for the delay, the importance of the issues to be decided and the prospects of success. None of these factors is

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(alone) decisive; the enquiry is one of weighing each against the others and determining what the interests of justice dictate.

- 15 The Calata Group relies on several factors which they say weigh in favour of the recusal application being dismissed. However, these factors must be balanced against the factors that the applicants have raised. Before I highlight these factors, it is important to correct certain factual assertions: It is incorrect to suggest that the basis for this application existed at the inception of the Commission. The applicants' case is more nuanced than this. The applicants' case is that the Chairperson's prior institutional association with the TRC and the NPA, and the Chairperson's conduct during the short life of the Commission and, more specifically, her handling of procedural objections and arrangements involving the Chief Evidence Leader, Adv Semenya SC, and the Calata Group's counsel, Advocate Varney, must be viewed cumulatively. These two grounds must be viewed in context, and taken as a whole. They are mutually reinforcing.
- 16 It is common cause that after the Commission started its work, and especially from 27 October 2025 until early December 2025, several important events happened and decisions were taken in the conduct of the Commission which crystallised the need for a recusal application. These events include the pre-hearing meeting of 27 October 2025, when objections were raised to the existence of the private and undisclosed arrangement between Adv Semenya SC and Adv Varney concerning the leading of evidence. The subsequent manner in which those objections were addressed on the one hand (including the Chairperson's procedural rulings, her endorsement of the arrangement, and her

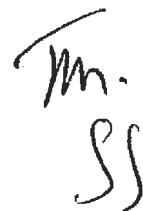
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refusal to provide reasons), viewed alongside her previous involvement in the TRC and the NPA, gave rise to a reasonable apprehension that the Commission's processes were not being approached with the requisite institutional neutrality and openness of mind. These subsequent events and decisions did not exist, nor could they reasonably have been anticipated at the time of the Chairperson's appointment. This does not mean that the first ground of recusal is undermined.

17 The second point of clarification relates to the reference to May 2025 as the starting point for when the applicants should have sought the Chairperson's recusal. It is common cause that the Commission did not start its work in May 2025 when the Chairperson was appointed. As far as the applicants are aware, the work of the Commission started in September 2025. The applicants were issued with Rule 3.3 notices on 25 September (in respect of myself and former Ministers Mabandla, Didiza and Kasrils) and 21 October 2025 (in respect of former Minister Nqakula). It is also only from this date that the applicants were directly affected by the institution of the Commission. The applicants would have had no basis to bring a recusal application before being issued with the Rule 3.3 notices and would have probably been accused of acting prematurely. Bearing in mind the assertion in the answering affidavits that the Chairperson's prior roles have no relevance to the issues in the Terms of Reference, it is highly unlikely that the Chairperson would have recused herself even if an earlier application had been brought.

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- 18 The corollary is that the period of 7 months that the Calata Group speaks of is exaggerated. The period of lateness, if there is any, must be determined in context, looking at the facts and the grounds of complaint in their fullness. But even if they are correct and the application is late by 7 months, this is not an isolated and decisive factor. As I understand it, the inquiry is broader than just how late the application is brought. A presiding officer should also look at other factors, like the explanation provided, the importance of the issues and prospects of being successful in the application. I have addressed these elements in the founding affidavit.
- 19 The importance of the issues in the Commission's Terms of Reference cannot be overstated. The Commission's investigation and recommendations centre around interference in TRC cases. This is an issue that touches the lives of the many victims of apartheid – including the Calata Group. It is also an aspect that touches on the lives of the applicants for the reason, *inter alia*, that a culpable finding of interference by the Chairperson could result in criminal charges being brought against the applicants.
- 20 The recusal application itself raises an important issue, namely, whether structural historical and institutional proximity to the subject matter of a Commission of Inquiry taken together with the presiding officer's handling of objections that were formally raised by parties would give rise to a reasonable apprehension of bias. The applicants have good prospects of being successful in the application. They have provided a reasonable explanation for why the application was only brought in December 2025 – the overlapping institutional

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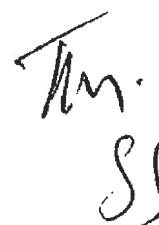
roles and the manner in which Justice Khampepe handled the objections relating to Adv Semenza SC crystallised the need to bring the recusal application. The application was brought shortly after the rulings on these objections.

21 There is a further important issue when the interests of justice is considered. If the Chairperson ought to recuse herself but refuses to do so, any subsequent step taken in the Commission proceedings would be a nullity. This means that if the Chairperson dismisses the application (either on the issue of lateness or on the merits) and this ruling is later overturned, and the Commission proceeds, anything done in the Commission becomes a nullity. It is thus in the interests of justice and the public interest in those circumstances not to permit a continuation of proceedings that may ultimately constitute a nullity on the basis of a technical timing objection. The rule against bias, actual or perceived, is constitutionally entrenched. It places a high premium on the substantive enjoyment of rights.

PRIOR INSTITUTIONAL ROLES

The TRC roles

22 The Calata Group's reasons for rebuffing the ground of recusal regarding Justice Khampepe's prior institutional roles can be summarised as follows: Yes, Justice Khampepe held the prior roles. But this does not non-suit her from presiding over the Commission. A mere overlap between cases or judgments is not a ground for recusal. The central question before this Commission is whether political interreference blocked the TRC cases from being prosecuted.

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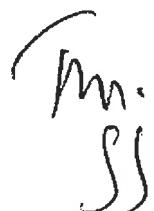
23 In so far as her roles in the TRC are concerned, they say that the question of political interference was not and could not have been at issue before the TRC. It is also absurd to suggest that a commissioner who signed off on the recommendation that prosecutions should follow in respect of offenders who were not granted amnesty would appear to be predisposed to defending prior institutional conclusions. While it is true that Justice Khampepe was party to the finding in the TRC report that the ANC had committed gross human rights violations during the armed struggle, that report also made such findings against the former apartheid government. The report also made findings against the Inkatha freedom Party, the Pan Africanist Congress and the United Democratic front. These findings against other groups were strategically left out by the applicants to raise the insinuation that Justice Khampepe would be predisposed or somehow biased against the ANC. These findings confirm to the reasonable observer that Justice Khampepe and the TRC's commissioners were independent, objective and not predisposed against any group. They also highlight that the application incorrectly says that Justice Khampepe was involved in the amnesty proceedings in the Cradock Four matter when she did not. They say that this is presumably alleged to create an impression of some focus by Justice Khampepe on the Cradock Four, whose family members have played a leading role in exposing political interference in the TRC cases.

24 I have addressed, in full, the reasons a reasonable observer, objective and aware of Justice Khampepe's extensive involvement in the TRC finding and amnesty determinations would apprehend that she may not approach the Commission

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with the degree of institutional detachment required. I have addressed this in the founding affidavit, and in the replying affidavit in response to Adv Semenya SC's answering affidavit. The primary submission, which is not addressed by the Calata Group, is that there is a direct link between the subject of this Commission (alleged political interference in TRC prosecutions), and the work that Justice Khampepe was engaged in in her various roles at the TRC (making findings about prosecutions and amnesty applications). This is not a slight link. This Commission is seeking to investigate whether there was improper interference in the recommendations made by the TRC Commission, especially those made by the TRC Amnesty Committee. The decisions of the TRC Amnesty Committee and the work of the NPA in pursuing TRC cases after amnesty was refused or not applied for lie at the heart of this Commission's work.

- 25 The Calata Group's emphasis on whether the Chairperson sat on a specific Cradock Four amnesty panel misses the substance of the applicants' case. The applicants' concern is not confined to participation in a single amnesty decision, but to the Chairperson's institutional and adjudicative involvement in the TRC process as a whole, including findings and recommendations that form part of the historical and political context of this Commission's work. Even accepting the Calata Group's factual correction, that does not answer the central enquiry, namely whether a reasonable, informed observer might apprehend a lack of impartiality arising from the Chairperson's prior institutional role when viewed cumulatively with her present function. The recusal enquiry does not turn on a checklist of panels sat on, but on overall context and perception.

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26 The suggestion that the applicants selectively rely on TRC findings adverse to the ANC misconceives the nature of the argument. The applicants do not contend that the Chairperson was partisan in her TRC work, nor do they dispute that the TRC made extensive findings against the apartheid state, the SAP, the IFP and other actors. The point is rather that the Chairperson was institutionally involved in formulating, endorsing and defending TRC findings and recommendations, including those touching on accountability and prosecution, and that this institutional proximity forms part of the factual matrix against which apprehended bias must be assessed. Acknowledging the breadth of the TRC's findings does not neutralise that proximity; it simply confirms the depth of the Chairperson's prior engagement with the subject matter.

27 The applicants do not contend that recommending prosecutions was improper or partisan. Nor do they dispute that the prosecution of serious crimes is a rule-of-law imperative. The concern is more subtle and constitutional in nature: where a presiding officer has previously participated, at an institutional level, in making findings and recommendations about accountability for apartheid-era crimes, a reasonable observer may apprehend a difficulty in later presiding over an inquiry that examines whether those very prosecutions were unlawfully obstructed. This is not an attack on the correctness of the TRC's recommendations, but a recognition that institutional continuity may give rise to perceived predisposition, particularly where the inquiry traverses overlapping historical terrain.

28 The Calata Group's characterisation of any overlap as "spurious" understates the nature of the Commission's mandate. While it is correct that the precise question

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of political interference in prosecutions could not have been adjudicated during the TRC's operational period, the Commission is nonetheless required to interrogate the aftermath, consequences and handling of TRC outcomes, including decisions about whether, when and how prosecutions proceeded. The applicants' case is not that the Chairperson previously adjudicated the same question, but that her prior adjudicative and institutional involvement in the TRC forms part of the contextual background that a reasonable observer would consider relevant when assessing impartiality in the present inquiry.

- 29 The Calata Group's submissions regarding the Chairperson's tenure at the NPA, properly understood, materially support rather than undermine the applicants' position. They agree with President Mbeki that the Commission's temporal inquiry should not be artificially confined to a narrow post-2003 window, but must interrogate the broader genesis of events, including discussions and interactions dating back to at least 1998. This concession is significant. It reinforces the applicants' broader concern that the Commission is traversing a historically layered terrain in which the Chairperson previously occupied senior institutional roles. The very fact that the Calata Group accepts a wider temporal frame confirms that the inquiry necessarily overlaps with periods and processes in which the Chairperson was institutionally engaged, thereby heightening, not diminishing, the importance of perceived detachment.
- 30 The applicants do not advance a simplistic proposition that past institutional association, without more, automatically warrants recusal. The case is instead that institutional proximity, when combined with the nature of the Commission's

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mandate and subsequent procedural developments, may cumulatively give rise to a reasonable apprehension of bias. The Calata Group's insistence on isolating each prior role in silos obscures the correct approach, which is to assess the totality of the circumstances through the eyes of a reasonable, informed observer. It is that cumulative assessment, not any single historical fact, that grounds the applicants' concern regarding the appearance of impartiality.

- 31 It is unhelpful for the Calata Group to rely on my longstanding professional association with Justice Khampepe, the public availability of her curriculum vitae, and my prior appointments of her to judicial and quasi-judicial roles, as these considerations do not answer the substance of the recusal application.
- 32 The issue is not whether Justice Khampepe's background was publicly known, nor whether I previously held her in high professional regard, but whether, viewed objectively and cumulatively, a reasonable and informed observer might apprehend a lack of impartiality in the particular context of this Commission and its mandate. Prior professional respect, familiarity, or appointments have no bearing on this question.

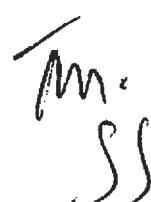
The role in the NPA

- 33 The Calata Group described Justice Khampepe's tenure at the NPA as "short". They say that the application speculates that Justice Khampepe had institutional responsibility to shape NPA policy on the TRC cases. According to them, during the period when Justice Khampepe was the Deputy NDPP, the NPA was "simply focused on gearing up for the investigation and prosecution of this cases." In

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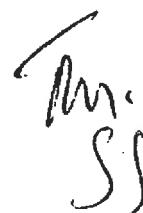
support, they rely on the affidavits of Adv Anton Ackermann SC and Adv Chris Macadam and their own founding affidavit in the application for damages. This, with respect, is speculative. At this point, the veracity of these allegations have not been tested before this Commission. Justice Khampepe would have been able to set the record straight, but the answering affidavit submitted on her behalf does not address this at all. Moreover, it is not clear from these affidavits what units were operative within the NPA at that time and what policies were applicable. What is clear however, is that these efforts are relevant to the work of the Commission. The relevance of the NPA's internal infrastructure as regards the TRC cases is especially important given the Calata Group's material support of our complaint about the curtailment of the Terms of Reference to alleged interference from 2003. The Calata Group in fact agrees with us that the Commission's temporal inquiry should not be artificially confined to a narrow post-2003 window, but must interrogate the broader genesis of events, including discussions and interactions dating back to at least 1998.

- 34 This concession is significant. It reinforces the applicants' broader concern that the Commission is traversing a historically layered terrain in which the Chairperson previously occupied senior institutional roles. The very fact that the Calata Group accepts a wider temporal frame confirms that the inquiry necessarily overlaps with periods and processes in which the Chairperson was institutionally engaged, thereby heightening, not diminishing, the importance of perceived detachment. The suggestion by the Calata Group that "active interventions to block . . . prosecutions of the TRC cases only commenced

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around mid-2003, more than 3 years after Judge Khampepe had left the NPA" is undermined by their concession and stands in sharp contrast with the case put forward in their founding affidavit in their damages claim and the allegations made before the Commission. In their founding affidavit, from about paragraph, the 376, the Calata Group appear to explain the motive behind the alleged political interference. In our assessment of these paragraphs, the apparent motive for political influence stems from, *inter alia*, the TRC's refusal of amnesty for collective responsibility to the ANC 37, alleged talks between the ANC and former generals on how to avoid prosecutions after the TRC through a new indemnity mechanism, and my failed attempts to amend the TRC legislation to allow for amnesty for collective responsibility without the need for individual disclosure.

- 35 The Calata applicants also allege that the only policy or strategy to address TRC cases that they are aware of emerged from the secret report of the Amnesty task Team (ATT) during 2004 which resulted in amendments to the prosecution policy. Ergo, there is no evidence of a prosecution plan present when Justice Khampepe was at the NPA. Again, this is speculative. The affidavit of Adv Semenya SC does nothing to shed light on this aspect.
- 36 It is interesting that the Calata Group says things like, by the time political interference started, Justice Khampepe had left the NPA. Or at the time when the NPA started this or that unit responsible for TRC cases, Justice Khampepe had left the NPA. They say these things as a matter of fact. A significant part of the Commission's work is to investigate whether, from 2003, there was political

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interference in the prosecution of TRC cases to try and block them. It goes without saying that the Commission will have to investigate the systems that were in place at the NPA to support the prosecutions. If it turns out, when the Commission actually starts to investigate this, that a unit was in fact established while Justice Khampepe was there, or information about the so called ANC-former generals deliberations were disclosed to the NPA when Justice Khampepe was still at the NPA, what then? Will Justice Khampepe have to recuse herself then? The work of a Commission is investigative and dynamic. One can reasonably anticipate that such information may come to light.

- 37 In the absence of such information later on, as matters stand, there is sufficient evidence to indicate that the NPA did establish units and draft policies to deal with the TRC cases. One of these units, the HRIU was established while Justice Khampepe was at the NPA. Crucially, and in the Calata Applicant's own evidence "*Justice Khampepe played a role in the HRIU including providing advice to the NDPP on the approach to TRC matters*" (letter from Webber Wentzel dated 11 November 2025). The answering affidavit deposed to by Adv Semenya SC does not dispute this.
- 38 We reiterate that the applicants do not advance a simplistic proposition that past institutional association, without more, automatically warrants recusal. The case is instead that institutional proximity, when combined with the nature of the Commission's mandate and subsequent procedural developments, may cumulatively give rise to a reasonable apprehension of bias. The Calata Group's insistence on isolating each prior role in silos obscures the correct approach,

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which is to assess the totality of the circumstances through the eyes of a reasonable, informed observer. It is that cumulative assessment, not any single historical fact, that grounds the applicants' concern regarding the appearance of impartiality.

- 39 In sum, the Calata Group does not provide a substantive answer to the complaint about Justice Khampepe's prior roles. They do not say why, based on the facts, a reasonable, informed observer may not reasonably apprehend a lack of impartiality.

THE HANDLING BY THE CHAIRPERSON OF THE SEMENYA SC OBJECTIONS

- 40 In paragraphs 35 and its subparagraphs of the founding affidavit I raised two, related complaints. The first concerns the Chairperson's handling of objections to an arrangement under which Adv Varney would lead certain witnesses instead of the Evidence Leaders, and the Chairperson's subsequent endorsement of that arrangement. The second concerns the Chairperson's handling of Adv Semenya SC's conduct in relation to prosecution-policy issues despite a written directive and undertaking as communicated in the correspondence of 18 and 19 September 2025 directing that he not engage with discussions, deliberations or evidence touching the Prosecution Policy amendments or matters implicating the NPA, and the later emergence on 13 November 2025 of an interview conducted by Adv Semenya SC with Dr Ramaite SC.
- 41 The answering affidavit does not engage with the constitutional substance of these complaints. Instead, it largely (a) disputes the factual characterisation of

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the witness-leading arrangement and (b) seeks to meet the point by asserting that I did not pursue Semenya SC's recusal.

The leading of witnesses

42 I deal first with the witness leading arrangement. As a starting point, the applicants (and the other parties) were not aware of the arrangement between Adv Semenya SC and Adv Varney. The transcript of 27 October 2025, which has not been placed in dispute by the Calata Group, sets out in every detail how the arrangement came to light. I do not attach the transcript here, but invite the Commission to look at the transcript, especially from page 78 onwards, including from page 79 from line 23 when Adv Gwala sought clarification about the Calata Group's Adv Varney speaking about leading eight witnesses. We say the arrangement was a secret because not all parties were informed of it before or when it happened, in the instance where it should be common cause that the arrangement affected all the parties. It is also commonly known and has been known by the Calata Group (at best for them, since 27 October 2025) that not all the parties had access to SharePoint. In fact, the transcript makes clear that a vast number of interested parties were not provided access to SharePoint. (see Transcript from p100 line14 to p106.) Any suggestion that there is any fabrication around the 27 October 2025 is denied.

43 The Calata Group says that "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." They then say that we intentionally left out the hearing of 28

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November 2025 which they say dealt with the issue of the leading of witnesses and the consent ruling that followed. Firstly, the suggestion that the proceedings were somehow left out for some nefarious reason is plainly an attempt to cast a cloud over the applicants' motivations. This is unfortunate, and evidently without any factual basis. Secondly, the Calata Group seems to suggest that the decision may or may not have been taken by the Chairperson in terms of Rule 3.3. This is pertinently incorrect. It is clear from the ruling issued by the Chairperson on 28 November 2025 and quoted by the Calata Group in paragraph 86 that the Commission did not make the decision. This is why the ruling by the Chairperson says that "2. There is currently a request by the Calata Group to lead the following witnesses. . .". There would have been no need for that order if Justice Khampepe had made the original decision.

- 44 The Calata Group alleges that the allegations in the founding affidavit, about the leading of own witnesses, is a departure from what our legal team submitted in "earlier submissions" where they stated that they do not, in principle object to the leading of witnesses by legal representatives. This is denied. If what is referred to are the written submissions that served before the Chairperson, then it is important to highlight that the applicants went further in the submissions and explained what the correct approach should be to leading witnesses – with reference to the Commission's own rules. A summary of the applicants' submissions are in annexure TMM6 page 4 of the applicants' submissions dated 5 November 2025. The core of the submission is that the overall responsibility to lead evidence is that of the evidence leaders, however, in exceptional

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circumstances, the Chairperson can permit the leading by own representatives. This remains the position now – as set out in paragraph 35.3, 42 and 43 of the founding affidavit. The Calata Group would have been advised that they cannot cherry pick from the founding affidavit. They have to read it as a whole. There is no “wildly erratic conduct” here.

- 45 The upshot of the Calata Group's answer to the complaint about the Chairperson's failure to properly deal with a very serious complaint about its procedures and its own rules is that it is conjecture, and there is no evidence to the accusation. The evidence has been set out in the founding affidavit. The Calata Group has not responded to the substance of the complaint. The ineluctable conclusion is that they do not have countervailing evidence. More importantly, they do not say that the manner in which the Chairperson handled the objection furthered the procedural guarantees in the Commission's own rules and regulations.

The application to recuse Adv Semenya SC

- 46 The Calata Group initially abided the Chairperson's decision in the recusal application of Adv Semenya SC. However, they attested – under oath – that: (a) Adv Semenya SC did question the witness, despite his denial under oath that he did so; (b) Adv Semenya SC's questioning contravened Justice Khampepe's directive and; (c) Adv Semenya SC ought not to have been involved in the questioning of the witness. In their written submissions, the Calata Group arrived at the conclusion that it was time “for Semenya to stand down as an evidence

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leader". They relied on two reasons. Firstly, by participating in the interview with Dr Ramaite SC, former Acting NDPP, Adv Semenya SC placed himself in breach of the Chairperson's ruling. Second, they "no longer believe that Semenya is in a position to 'efficiently perform' his function as evidence leader." In their view, the Chairperson's directive had the effect that Adv Semenya SC was excluded from a crucial part of the Commission's work. They were also concerned that Adv Semenya SC would inadvertently breach the directive again, and disrupt the Commission's work.

- 47 In this affidavit, the Calata Group criticises the applicants for not mentioning the Chairperson's ruling and especially para 58 thereof where the Chairperson held that Adv Semenya SC's role in Nkadimeng did not disqualify him from acting as evidence leader and therefore, the direction falls away and must be read as pro non scripto. They categorise this omission as "disturbing".
- 48 There is nothing disturbing about this omission. For the applicants, this finding does not deal with the applicants complaint. As explained in the founding affidavit, Adv Semenya SC breached a directive by the Chairperson that was supposed to create a buffer between him and issues regarding the NPA's prosecution policy. The directive was not made for the sake of it, but was made to ensure that conflict of interest concerns are neutralised. Adv Semenya SC went ahead and breached this directive. The Calata Group agreed that the proper course of action was for Adv Semenya SC to be recused. Instead of recusing him, the Chairperson regularised his conduct after the fact. It is this

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handling of the complaint that the applicants are opposed to. The Chairperson's own supervisory handling of the objection, her endorsement of a departure from the Commission's processes, and her approach to enforcing her own directive, viewed cumulatively, could reasonably give rise to an apprehension that the process is not being managed with the requisite procedural neutrality.

- 49 I reiterate that the complaint is about Justice Khampepe's handling of Adv Semenya SC's conflict issue and how this would lead to a reasonable, informed observer apprehending a lack of impartiality. The complaint calls into question her conduct in compromising the integrity of the evidence leading process.
- 50 The applicants' failure to join a recusal application directed at Adv Semenya SC cannot insulate the Chairperson's subsequent rulings, procedural choices, or supervisory omissions from scrutiny, where those decisions themselves give rise to a reasonable apprehension of bias.

SEQUENTIAL RESPONSES TO THE ANSWERING AFFIDAVIT

Ad paragraphs 1 to 3

- 51 I note the allegations in these paragraphs. While it is not explicitly stated (I presume by mistake), I deny that the allegations in the affidavit are all true and correct.

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Ad paragraphs 4 to 9

52 I have addressed the allegations regarding delay and abuse earlier in these paragraphs in this affidavit and they are denied.

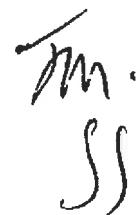
53 The suggestion that I was procedurally confined to filing an answering affidavit to the Zuma application is incorrect. The Commission expressly invited participation in the recusal process, and nothing in the directives precluded an affected party from advancing independent grounds of recusal relevant to their own position. There are obvious parallels between the grounds advanced by President Zuma and the two grounds relied on in this application. The Commission issued a directive on timelines in the conduct of the recusal application. These timelines were affected by several aspects including the late filing of the Zuma application. It was not necessary to seek further directions.

54 The Calata Group contends that the application was filed way out of time and masquerades as a response to former President Zuma's recusal application in purported compliance with the Commission's directive of 11 December 2025, but is in truth a fresh, stand-alone application that makes only two passing references to the Zuma application, and only in the context of the Commission's directions. They further contend that, had President Mbeki intended merely to support the Zuma application, he ought to have filed an answering affidavit in support of the relief sought therein rather than launching a separate application.

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and that no directions were sought regarding the filing of answering or replying affidavits.

- 55 The complaints regarding undue delay and the characterisation of the application as a "stand-alone application" are misplaced and ignore the procedural context created by the Commission itself. On 3 December 2025, following a formal request by former President Zuma for the Chairperson's recusal, the Commission circulated that request to all interested and affected parties and expressly invited any party minded to participate in the recusal process to do so. That invitation objectively conveyed that the question of the Chairperson's recusal was not only live, but was regarded by the Commission as warranting structured engagement by affected parties within a defined process. The invitation was plainly issued in the interests of justice and the public interest. Those interests will be better served by a determination of the application on its merits, which will more effectively safeguard the credibility and integrity of the Commission's processes and outcomes. I reiterate the constitutional importance of the rule against bias, whether actual or reasonably perceived.
- 56 In those circumstances, it was both reasonable and procedurally appropriate for parties, including the applicants, to anticipate that the Chairperson would properly consider whether sufficient grounds existed for her recusal within the framework she herself had initiated by expressly inviting any party minded to participate in the recusal process to do so.

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57 The period now relied upon as constituting delay is therefore inseparable from, and indeed a direct consequence of, the process expressly initiated by the Commission. It cannot coherently be invoked to non-suit a party who acted in accordance with an invitation extended by the Chairperson herself.

Ad paragraphs 10 to 12

58 The allegations in these paragraphs are noted.

Ad paragraph 13

59 Having signed the recusal application and obtained the signed confirmatory affidavits, the recusal application was filed with the Commission on 20 December 2025. It is admitted that the application was circulated on the evening of 21 December 2025 by the Secretariat of the Commission. It is denied that no adequate reasons were provided for the timing of the filing. The reasons are expressly set out in paragraph 64 of the founding affidavit, read with the grounds of complaint in the founding affidavit as a whole.

Ad paragraph 14

60 It is denied that the application is a "new, stand-alone application". That allegation has already been addressed earlier in this affidavit. Even if it is "stand-

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alone" it is not impermissible. The rest of the allegations in this paragraph are noted.

Ad paragraph 15 and subparas

61 The contents of this paragraph, setting out the directives issued on 3 December 2025 and the amended directives of 11 December 2025, are admitted. Those directives expressly contemplated participation by parties wishing to support or oppose the recusal application, and it was within that procedural context that my application was brought. The directive did not prescribe the format for the support of the Chairperson's recusal. It did not say that it is only permissible in the format of an answering affidavit to former President Zuma's application. The applicants were at large to determine the appropriate procedural step in that regard.

Ad paragraphs 16 and 17

62 The issue of condonation for the late filing of my application is expressly addressed in paragraphs 11 and 64 of my founding affidavit. Save as aforesaid, the remaining allegations in these paragraphs are noted.

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Ad paragraphs 18 to 20

63 It is denied that the founding affidavit contains "several factual inaccuracies". It is also denied that the applicants would not be prejudiced by the late filing of the answering affidavit. The answering affidavit was filed on 6 January 2026, a day before the replying affidavit was due for filing on 8 January 2026. The applicants also had to respond to the answering affidavit of Adv Semenya SC during that period. The remaining allegations in these paragraphs are noted.

Ad paragraph 21

64 The allegations contained in this paragraph are denied.

Ad paragraph 22

65 I note the allegations in this paragraph.

Ad paragraphs 23

66 The allegation that the lateness of my application is "even more egregious" is denied. This issue has been comprehensively addressed earlier in this affidavit. Save as aforesaid, the remaining allegations in this paragraph are noted.

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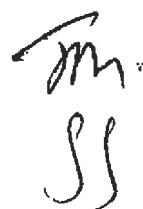
Ad paragraphs 24 to 25

67 I admit that I (together with Former Minister Mabandla) attempted to intervene in the application. It is not within the scope of this application to explain the procedural aspects that occurred in that application. It suffices to say that during the attempt to intervene, the issue about the establishment of the Commission and its terms of reference were in the process of being settled. Significantly, there were ongoing discussions between the government and the Calata Group about the terms of reference. The Calata Group is clearly aware of this. It is thus unclear what is meant by "since the first quarter of 2025".

68 I was issued with a Rule 3.3 notice on 25 September 2025.

Ad paragraphs 26 to 29

69 I have addressed the allegations in these paragraphs earlier in this affidavit. To the extent that what is said here is contrary to what I said earlier, the allegations are denied. There is no suggestion in the founding affidavit that Justice Khampepe's previously held positions in the TRC and NPA "suddenly" reached the applicants' legal team.

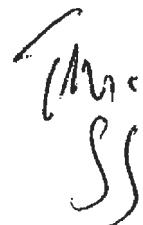
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Ad paragraph 30

70 I have been advised that a recusal application should be brought as soon as reasonably possible once circumstances giving rise to a reasonable apprehension of bias become apparent. However, the principle does not require an applicant to bring a recusal application on the basis of mere background knowledge or abstract institutional history. The duty to act arises when the relevant facts have sufficiently crystallised to give rise, objectively, to a reasonable apprehension of bias. In this matter, that crystallisation occurred only as the proceedings unfolded and in light of the cumulative circumstances relied upon, and the application was brought promptly thereafter. The overarching question is whether the delay should be overlooked in the interests of justice.

Ad paragraphs 31 to 33

71 I have addressed the allegations in these paragraphs earlier in this affidavit. They are denied. I admit that we participated in the Commission's proceedings without raising the issue of recusal before December 2025. I refer to our founding affidavit read with the replying affidavit in response to the affidavit of Adv Semenya SC for why this was done. The Chairperson had not issued her rulings by 10 November 2025. In fact, she was in the process of addressing the procedural complaints.

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Ad paragraph 34 to 35

72 The letter circulated on 11 November 2025 did no more than rehash matters of public record concerning the Chairperson's background. It did not create a new factual basis for recusal, nor did it address the subsequent conduct that forms part of the present recusal application. It is denied that the application was not prosecuted promptly and without delay.

Ad paragraphs 36 to 37

73 The allegations in these paragraphs are denied. The Calata Group's formulation of the interests of justice is one-sided and incomplete. The interests of justice entails a balancing of factors. It does not only encompass expedition, but also the imperative that the proceedings of a commission of inquiry be conducted, and be seen to be conducted, by an impartial decision-maker. A recusal application brought once the relevant circumstances have objectively crystallised does not undermine the public interest, but serves it. Their formulation of the complaint is acontextual and piecemeal, which in turn leads to an exaggeration regarding the period of lateness.

Ad paragraphs 38 to 40

74 The allegations in these paragraphs are denied. The Calata Group misconstrues the nature of the second ground of recusal. It is not advanced as a substitute for,

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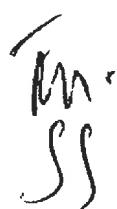
or retreat from, the first ground, nor as a belated "tipping point" deployed to excuse delay. Rather, it forms part of the cumulative factual matrix relevant to the objective assessment of whether a reasonable and informed observer might apprehend a lack of impartiality.

75 I am further advised that under our law, it is neither inconsistent nor impermissible for subsequent procedural conduct to crystallise or confirm an apprehension arising from prior institutional context. The suggestion that the second ground undermines the first is denied. The two grounds are complementary, not mutually destructive, and the characterisation of the second ground as an add-on is further denied.

Ad paragraphs 41 to 44

76 The allegations contained in these paragraphs have been addressed earlier in this affidavit, particularly in relation to delay and the interests of justice, and are denied.

77 It is denied that this application constitutes an abuse of process. The application is brought to vindicate the integrity of the Commission's proceedings and to ensure that they are, and are seen to be, conducted with the requisite impartiality. Where a reasonable apprehension of bias arises, the interests of justice require that the application be entertained and granted, rather than dismissed on technical grounds.

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Ad paragraphs 45

78 The allegation that this ground of recusal is “riddled with errors” is denied.

Ad paragraph 46 to 46.2

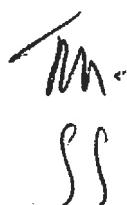
79 To the extent that it is alleged that Justice Khampepe did not sit on the particular amnesty panel referred to, that factual correction is noted. However, it is denied that the recusal application depends on participation in a single amnesty determination or that the absence of such participation disposes of the recusal enquiry.

Ad paragraphs 46.3 to 46.4

80 The allegations regarding motive, impression-creation, and alleged lack of diligence are denied. They are speculative, argumentative, and irrelevant to the objective assessment of whether a reasonable and informed observer might apprehend a lack of impartiality.

Ad paragraph 46.5

81 Any factual correction regarding the number of amnesty applicants or the identity of those granted amnesty is noted. It does not advance the Calata Group's case on recusal and is not material to the issues before this Commission.

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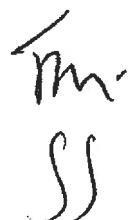
Ad paragraphs 47 to 54

82 The allegations in these paragraphs are misconceived. We do not allege, nor have we ever suggested, that the Chairperson is biased for or against any political party, including the ANC. The recusal application does not rest on partisan alignment, nor on the content of any particular TRC finding.

83 Whether the TRC also made findings against the apartheid state, the SAP, the IFP, or any other actor is immaterial to the objective enquiry. The Calata Group's attempt to characterise the application as selectively political deliberately mischaracterises both the case advanced and the legal test for recusal.

84 I deny that my failure to refer to findings against other groups supports the inference contended for, namely that Justice Khampepe and the other TRC Commissioners were thereby shown to be independent, objective and neutral, or not predisposed for or against any group.

85 The issue is institutional and contextual, arising from the Chairperson's prior adjudicative role within the TRC and her present role in an inquiry examining the handling and aftermath of TRC-related matters.

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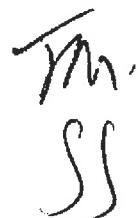
Ad paragraphs 55 to 58

86 The allegations in these paragraphs are denied. I do not contend that the Chairperson is disqualified merely because, as a TRC Commissioner, she was party to recommendations that un-amnestied perpetrators of gross human rights violations should be prosecuted. Such recommendations were a rule-of-law imperative and are not, in themselves, objectionable.

87 The apprehension of bias does not arise from the abstract proposition that crimes should be prosecuted, but from the Chairperson's prior institutional involvement in the formulation of TRC findings and prosecutorial recommendations, assessed cumulatively with her present role in presiding over an inquiry that scrutinises the alleged handling, suppression and aftermath of those very TRC-related prosecutions. The Calata Group's characterisation of this ground as "ridiculous" misconstrues both the case advanced and the objective test for recusal.

Ad paragraphs 59 to 60

88 The contents of these paragraphs are noted to the extent that they correctly describe the Commission's narrow mandate. However, they do not answer the recusal concern. The concern is whether a reasonable and informed observer might apprehend a lack of impartiality where the Chairperson previously played an institutional decision-making role within the TRC and now presides over an inquiry examining whether political interference obstructed the implementation of

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TRC-related prosecutions. The narrowness of the Commission's mandate does not neutralise that apprehension, it underscores the importance of demonstrable impartiality in the conduct of the inquiry.

Ad paragraphs 61 to 64

89 The allegations in these paragraphs are denied. I do not contend that mere prior service on the TRC or its Amnesty Committee, without more, automatically gives rise to a reasonable apprehension of bias. The recusal concern arises from the Chairperson's prior institutional adjudicative role within the TRC, assessed cumulatively with her present responsibility for presiding over an inquiry that examines the handling and aftermath of TRC-related prosecutions. Whether the precise question of political interference was adjudicated during the TRC period does not dispose of the objective enquiry. The issue is not prior determination of the same question, but whether a reasonable and informed observer might apprehend a lack of impartiality in the present proceedings.

Ad paragraphs 65 to 66

90 I have addressed the allegations in these paragraphs earlier in this affidavit. They are denied.

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Ad paragraphs 67 to 67.3

91 The allegations in these paragraphs are denied, for the reasons set out earlier in this affidavit.

Ad paragraph 68

92 This allegation in this paragraph is denied. It advances a contested factual characterisation of when political interference in TRC-related investigations and prosecutions is said to have commenced. Determining whether interference began only in mid-2003, or whether its origins lie earlier, is itself a central question within the mandate of this Commission. It cannot be assumed as an established fact for purposes of resisting recusal, nor does it dispose of the objective enquiry into perceived impartiality.

Ad paragraphs 69 to 72

93 The allegations in these paragraphs are denied. They advance a particular characterisation of when policy or strategy relating to TRC cases is said to have emerged. Whether the only relevant interventions occurred before or after 2003, or whether earlier institutional positioning, decisions or omissions contributed to the subsequent handling of TRC-related prosecutions, is itself a matter falling squarely within the Commission's investigative mandate. The availability of other

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witnesses to explain aspects of institutional history does not answer the question of perceived impartiality.

Ad paragraph 73

94 The allegation in this paragraph is denied. Determining whether, when, and how such steps were taken, including whether their origins lie earlier than is asserted by the Calata Group, is itself central to the mandate of this Commission. The Calata Group's attempt to fix the commencement of interference as a settled fact is misplaced and amounts to an impermissible pre-judgment of issues the Commission is expressly tasked to investigate.

Ad paragraph 74

95 I vehemently and categorically deny the suggestion that meetings took place for the purpose of blocking or avoiding prosecutions of TRC-related cases. In any event, whether meetings occurred, what their purpose was, and whether they constituted steps amounting to political interference or obstruction are matters that fall squarely within the mandate of this Commission to investigate in terms of its terms of reference. They cannot be assumed as established facts, nor relied upon selectively to pre-empt the very enquiry the Commission has been constituted to undertake.

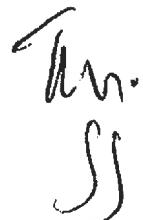
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Ad paragraphs 75 to 75.3

96 The contents of this paragraph are noted to the extent that the Calata Group accepts that the Commission's temporal inquiry should not be artificially confined to 2003. However, I deny any insinuation or inference that I have alleged, admitted, or established political interference during the earlier period referred to. The existence, nature, purpose and legal significance of any interactions said to have occurred prior to 2003 are contested matters and form part of the very issues the Commission has been mandated to investigate. It is not for the parties to predetermine the facts or to ascribe characterisations of "interference" in advance of the Commission's enquiry.

Ad paragraph 76

97 The allegation is denied. We do not contend that the Chairperson has an institutional interest arising from personal responsibility for, or participation in, decisions that directly interfered with TRC-related prosecutions. The recusal concern does not depend on establishing that such interference occurred during her tenure. It arises from the objective institutional context, viewed cumulatively, in which the Chairperson previously held senior adjudicative and prosecutorial roles within the TRC and the NPA and now presides over an inquiry examining the handling, progression, and suppression of TRC-related cases.

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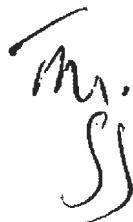
98 Importantly, the Calata Group states that the decisions that Justice Khampepe took or was party to had nothing to do with interference in TRC cases which they say had not commenced during her tenure at the TRC and the NPA. This may be so, but that is not the point of the complaint.

Ad paragraphs 76.1 to 78

99 The allegations in these paragraphs are denied to the extent that they purport to state settled facts or foreclose issues that fall within the Commission's investigative mandate. I do not dispute that the prosecution of serious apartheid-era crimes is required by the rule of law, nor do I contend that the Commission is tasked with determining whether such crimes ought to have been prosecuted.

100 However, the assertion that the NPA pursued TRC-related prosecutions "unhindered" until mid-2003 is a contested factual characterisation that this Commission has been established precisely to investigate. It cannot be assumed as established for purposes of resisting recusal.

101 I do not suggest that mere participation in TRC recommendations disqualifies a person from presiding over this Commission. The recusal concern does not arise from abstract support for the prosecution of serious crimes, but from the cumulative institutional context in which the Chairperson previously held senior adjudicative and prosecutorial roles and now presides over an inquiry examining

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whether, how, and when interference may have obstructed the pursuit of TRC-related cases.

102 While it is accepted that past overlap or association with subject matter is not, without more, a ground for recusal, the enquiry is not conducted in the abstract. It turns on whether, viewed objectively and cumulatively, a reasonable and informed observer might apprehend a lack of impartiality in the particular circumstances of this Commission. For the reasons set out earlier in this affidavit, that threshold has been met.

Ad paragraphs 79 to 80

103 The allegations in these paragraphs are denied. The second ground of recusal is neither flimsy nor specious, nor is it an afterthought designed to explain timing. As set out in the founding affidavit, it constitutes an independent and substantive ground which compounds the first, arising from the Chairperson's own handling of serious procedural and conflict-of-interest objections relating to Adv Semenya SC.

104 The fact that I did not seek the recusal of Adv Semenya SC does not detract from this ground. The complaint is not directed at Adv Semenya SC personally, but at the Chairperson's response to, and management of, the objections raised by multiple parties, including her endorsement of an irregular arrangement, her failure to interrogate a breach of her own directive, and her refusal to engage

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meaningfully with those concerns. Those matters go directly to the Chairperson's exercise of her adjudicative responsibilities and independently give rise to a reasonable apprehension of bias.

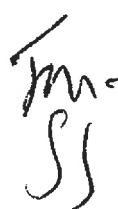
Ad paragraphs 81 to 81.1

105 I deny any attempt to mislead the Commission as to the facts behind the request for the Calata witnesses to lead their own witnesses. I have addressed the circumstances around the arrangement earlier in this affidavit.

Ad paragraphs 81.2 to 81.5

106 The allegations in these paragraphs are denied. The complaint concerns the opaque and bilateral manner in which the arrangement between Adv Semenza SC and Adv Varney was concluded, without notice to or consultation with other affected parties, and in circumstances where the Chairperson was later required to rule on objections arising from that very process.

107 The attempt to characterise these concerns as fabricated or misleading ignores the undisputed fact that the arrangement was not disclosed contemporaneously, was not authorised through a transparent process in terms of the Commission's Rules, and only came to light during the pre-hearing meeting of 27 October 2025, prompting objections from multiple parties. These procedural irregularities, viewed cumulatively with the Chairperson's handling of the objections and

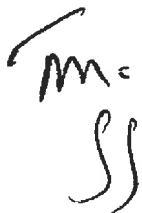
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related directives, independently give rise to a reasonable apprehension of bias, as fully explained in the founding affidavit.

108 We also addressed our interpretation of the rules in our submissions which are annexed to the founding affidavit. We submitted, and still submit, that the rules envisage a procedure for any deviation from the default position in Rule 3.1.

Ad paragraphs 82 to 82.2

109 The allegations in these paragraphs are denied. The fact that I did not seek the recusal of Adv Semenya SC, or file papers in support of such an application, is neither determinative nor relevant. As made clear in the founding affidavit, the second ground of recusal is not directed at Adv Semenya SC personally, but at the Chairperson's handling of serious and substantiated objections relating to his conflict of interest and procedural irregularities, including her endorsement of an irregular arrangement and her failure to interrogate a breach of her own directive. The applicants' decision not to pursue a separate recusal application against Adv Semenya SC cannot lead to an inference that they did not regard the conflict as serious. The recusal application was adequately motivated by the NPA and the Department of Justice. The failure to challenge also does not diminish the seriousness of those concerns, nor does it preclude reliance on the Chairperson's response to them as an independent ground for recusal.

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Ad paragraphs 83 to 85

110 The allegations in these paragraphs are denied. I have addressed the contentions regarding the proceedings of 28 November 2025. As explained in the founding affidavit and in my reply to Adv Semenya SC's answering affidavit, the objection is not to the existence of a later procedural engagement; it is to: (i) the manner in which the initial undisclosed arrangement was concluded and subsequently endorsed; and (ii) the Chairperson's handling of the objections arising from that process. The consent ruling, which was contributed to by the legal representatives present, did not cure the initial irregular arrangement. The contents of the ruling speak for themselves.

Ad paragraphs 86 to 88

111 The allegations in these paragraphs are denied. My legal representatives' participation in the formulation of a draft procedural ruling does not address, let alone cure, the substance of the complaint.

112 It is correct that the parties agreed to an order, which was to the effect that the Chairperson would consider the papers before her (including the applicants and other parties' objections) and make a ruling. Despite the clear wording of the rules, the ruling was not supported by any reasons and no reasons were forthcoming after the applicants' request therefore.

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113 The agreed upon order was not to settle the issue, but to allow the Chairperson to consider the request (made then for the first time to her) and the objections raised by the parties. It is correct that the objection was ultimately decided, but this application is not about trying to unsettle that outcome. It is about the Chairperson's handling of that objection and how this impacts upon her impartiality.

114 I must point out that the Calata Group's categorisation of the procedure for the future conduct of applications as "informal" is unclear. The procedure is informed by the Rules and seeks to put in place a process to ensure that future conduct for the leading of evidence is done in accordance with the guidelines in the Rules. It is not informal in the sense that it may or may not be followed.

115 The Calata Group will appreciate that the complaint about a failure to properly deal with the objection was not lightly made, and is not without basis.

Ad paragraphs 89 to 92

116 The allegations in these paragraphs are denied. They are based on a mischaracterisation of my case. As is clear from both my legal practitioners' submissions before the Commission and the founding affidavit, I have never objected in principle to a legal representative leading a witness. The applicants' objections are directed at the irregular and undisclosed process by which the

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Calata Group was permitted to do so, and at the Chairperson's subsequent handling of the objections arising from that process.

117 There is no inconsistency between accepting that counsel may, in appropriate circumstances, be permitted to lead witnesses, and objecting to a deviation that was not authorised through a transparent, reasoned decision in terms of the Commission's Rules. The attempt to portray this as erratic or frivolous conduct is unfounded and does not engage with the substance of the concerns raised.

Ad paragraphs 93 to 97

118 The allegations are denied to the extent that they suggest my complaint turns on whether I pursued or supported the recusal of Adv Semenya SC. I have addressed the substance of these allegations earlier in my affidavit. Any allegations that contradicts those submissions is denied.

119 I further deny that my criticism is "emotive" or unwarranted. It is based on the objective features of how the objections were handled, the manner in which the directive was treated as falling away, and the implications this reasonably has for the appearance of procedural neutrality and impartial supervision of the Commission's evidence-leading process. Whether the Chairperson ultimately concluded that Adv Semenya SC was not conflicted does not answer the recusal enquiry, which is concerned with the reasonable apprehension arising from the Chairperson's handling of these matters cumulatively.

TM
SS

Ad paragraphs 98 to 99

120 The allegations in these paragraphs are noted.

Ad paragraphs 100 to 105

121 The allegations in these paragraphs are denied. The assertion that the issue of prejudice is repetitive or does not require a response is misplaced. Prejudice lies at the heart of this application and is fully articulated in the founding affidavit. We accept that prejudice must be looked at from both sides.

122 It is denied that the alleged seriousness of the allegations, standing alone, is the sole basis upon which prejudice is claimed. The founding affidavit makes clear that prejudice arises from the cumulative effect of the Chairperson's prior institutional proximity to the subject matter and her subsequent handling of material procedural objections, particularly those relating to Advocate Semenya SC and the leading of evidence.

123 The suggestion that the Chairperson has demonstrated procedural neutrality is denied. The founding affidavit details specific instances where serious objections were not interrogated, irregular arrangements were endorsed, and reasons were refused. These matters are factual, substantiated, and go directly to the appearance of impartiality.

A handwritten signature in black ink, appearing to read "Mr. S".

124 The allegation that this application is undermined by delay or "erratic conduct" is denied. The timing of the application is fully explained in the founding affidavit.

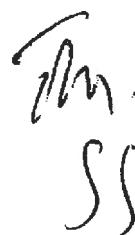
125 Properly understood, the founding affidavit establishes a clear, objectively grounded basis for prejudice. The contrary characterisation advanced in these paragraphs amounts to a misreading of the case advanced and is rejected.

Ad paragraphs 106 to 109

126 The allegations in these paragraphs are denied. The issue of timing has been comprehensively addressed earlier in this affidavit and in the founding affidavit. It is denied that no explanation was offered for when the application was brought.

127 It is denied that the application was "embroidered" with last-minute or opportunistic allegations. As explained earlier, the grounds for recusal crystallised cumulatively as the Commission's proceedings unfolded, particularly in light of the Chairperson's handling of material procedural objections. These issues were neither contrived nor peripheral.

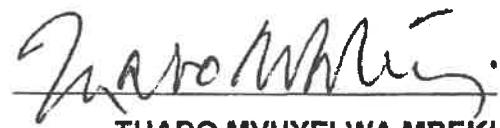
128 The characterisation of the application as opportunistic is denied. It amounts to argument rather than fact and does not engage with the substance of the grounds advanced.

A handwritten signature consisting of the letters 'Th' and 'ss' stacked vertically.

129 It is accepted that judicial officers are presumed to act impartially. However, that presumption is not irrebuttable. The application does not impugn the Chairperson's integrity or good faith, but is directed at whether a reasonable, informed observer might apprehend a lack of impartiality in the particular circumstances of this Commission. For the reasons already advanced, that threshold has been met.

CONCLUSION

130 In light of the above, I pray for the relief set out in the Notice of Application



THABO MVUYELWA MBEKI

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposed before me at JOHANNESBURG on this the 13TH day of January 2026, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

SIYABONGA SINEKE
PRACTISING ATTORNEY RSA
COMMISSIONER OF OATHS
UNIT 7 THE GUILD HOUSE
239 BRONKHORST STREET, BROOKLYN 0181
TEL: 012 001 0124

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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

CONFIRMATORY AFFIDAVIT

I, the undersigned,

BRIGITTE SYLVIA MABANDLA

do hereby make oath and say:

- 1 I am an adult female and former Minister of Justice and Constitutional Development from 29 April 2004 to 25 September 2008.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the replying affidavit to the Calata Group of witnesses deposed to by former President, **Thabo Mbeki** and confirm that the averments therein, as far as they relate to me.

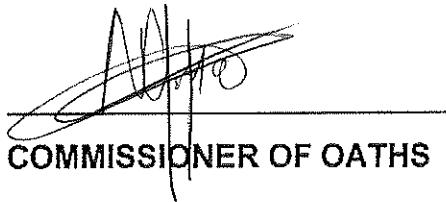


BRIGITTE SYLVIA MABANDLA



1

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and deposed before me at JOHANNESBURG on this the 14TH day of January 2026, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

FULL NAMES: **NOSIPHO CONNIE JAFTHA**
CAPACITY: PRACTISING ATTORNEY RSA
COMMISSIONER OF OATHS
ADDRESS: UNIT 7 THE GUILD HOUSE
239 BRONKHORST STREET, BROOKLYN 0181
TEL: 012 004 0424



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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

CONFIRMATORY AFFIDAVIT

I, the undersigned,

RONNIE KASRILS

do hereby make oath and say:

- 1 I am an adult male and former Minister of Intelligence Services from 27 April 2004 to 25 September 2008.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the replying affidavit to the Calata Group of witnesses deposed to by former President, **Thabo Mbeki** and confirm that the averments therein, as far as they relate to me.



RONNIE KASRILS



1

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposed before me at JOHANNESBURG on this the 14TH day of January 2026, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

FULL NAMES: **NOSIPHO CONNIE JAFTA**
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2

**THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING
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In the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

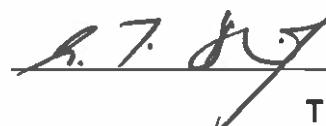
CONFIRMATORY AFFIDAVIT

I, the undersigned,

THOKO DIDIZA

do hereby make oath and say:

- 1 I am an adult female and former Acting Minister of Justice and Constitutional Development, serving as such on or about September 2006.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the replying affidavit to the Calata Group of witnesses deposed to by former President, Thabo Mbeki and confirm that the averments therein, as far as they relate to me.



THOKO DIDIZA

I certify that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and deposed before me at Cape Town on this the 13 day of January 2026, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.

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0441632.5
to JWS Smuts

COMMISSIONER OF OATHS

FULL NAMES: James Wallace Sleigh Smuts
 CAPACITY: Warrent officer
 ADDRESS: Good Hope Building, Parliament



**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 the matter between for the recusal application of the Commission Chairperson
Justice Sisi Khampepe

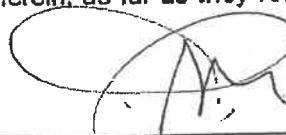
CONFIRMATORY AFFIDAVIT

I, the undersigned,

CHARLES NQAKULA

do hereby make oath and say:

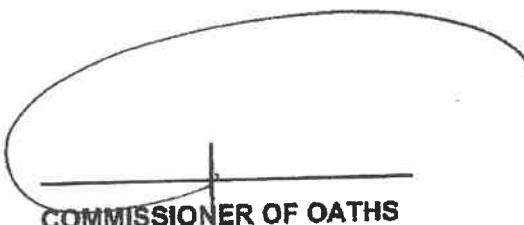
- 1 I am an adult male and former Minister of Safety & Security from 07 May 2002 to 25 September 2008.
- 2 Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
- 3 I have read the replying affidavit deposed to by former President, Thabo Mbeki and confirm that the averments therein, as far as they relate to me.



CHARLES NQAKULA



I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposed before me at Johannesburg on this the 14 day of January 2026, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

FULL NAMES: SIYABONGA SINEKE
CAPACITY: PRACTISING ATTORNEY RSA
ADDRESS: COMMISSIONER OF OATHS
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239 BRONKHORST STREET, BROOKLYN 0181
TEL: 012 001 0424

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

In the matter between:

THABO MVUYELWA MBEKI	1 st Applicant
BRIGITTE SYLVIA MABANDLA	2 nd Applicant
CHARLES NQAKULA	3 rd Applicant
RONALD KASRILS	4 th Applicant
THOKO DIDIZA	5 th Applicant

and

JUSTICE SISI KHAMPEPE, THE CHAIRPERSON OF THE COMMISSION	Respondent
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**NOTICE OF MOTION: *IN RE* CONDONATION FOR LATE FILING
REPLYING AFFIDACITS**

PLEASE TAKE NOTICE THAT the first to fifth applicants ("applicants") intend to apply to this Commission, at the hearing of the recusal application, for a ruling in the following terms:

1. Condoning the late filing of the applicants' late filing of:
 - 1.1 Their replying affidavit to the answering affidavit that was deposed to by Advocate Ishmael Semenya SC; and

- 1.2 Their replying affidavit to the answering affidavit that was filed on behalf of the Calata Group.
2. Granting the applicants such further and/or alternative relief.

PLEASE TAKE FURTHER NOTICE that the applicants rely on the attached affidavit of **MR IRVINE FERGUS ARMOED** to support this application.

DATED AND SIGNED AT JOHANNESBURG ON 15TH JANUARY 2026.



Boqwana Burns Attorneys
Attorneys for the Applicants
1st Floor, 357 Rivonia Boulevard
Rivonia, Johannesburg
Email: irvine@boqwanaburns.com/
aneesa@boqwanaburns.com
Ref: Mr I Armoed/ Aneesa

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

In the matter for the recusal application of the Commission Chairperson Justice Sisi
Khampepe

AFFIDAVIT IN SUPPORT OF CONDONATION

Recusal of Commission Chairperson, Justice Sisi Khampepe

I, the undersigned,

IRVINE ARMOED

do hereby make oath and state that:

- 1 I am an adult director at Boqwana Burns Incorporated, the attorneys of record for former President Thabo Mbeki and the four former members of the national executive. I am attorney of the High Court of South Africa.
- 2 Unless otherwise stated or indicated by the context, the facts contained in this affidavit are within my personal knowledge and are to the best of my knowledge and belief both true and correct.
- 3 The purpose of this affidavit is to seek condonation for late filing of the applicants' respective replying affidavits to the answering affidavit that was deposited to by Adv Semenya SC, as well as filed on behalf what has been referred to as the Calata Group in these proceedings.

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BACKGROUND

- 6 On 3 December 2025, the Commission¹ sent correspondence (annexure "IA1") to all "interested parties", advising that former President Jacob Zuma would be bringing an application for recusal of the Chairperson of the Commission, the Honourable Justice Sisi Khampepe ("Justice Khampepe"). The Commission further advised that any party seeking to participate in that application was required to adhere to the timelines indicated in its directives.
- 7 The Commission's directives required said "interested parties" to file: recusal applications by 11 December 2025; answering affidavits by 17 December 2025; replying affidavits by 22 December 2025; and written arguments by 14 January 2026.
- 8 These dates were subsequently amended (annexure "IA2"), so that founding papers were to be filed by 15 December 2025; answering papers by 22 December 2025; replying affidavits by 8 January 2026 and written arguments by 14 January 2026. Oral arguments were scheduled to be made on 16 January 2026.
- 9 We received service of Adv Semenya SC's answering affidavit on 27 December 2025, during the festive period. Because of the time of year that it was (especially in the South African context), we were only able to attend to the drafting of the replying affidavit to Adv Semenya SC's answering affidavit early

¹ Judicial Commission of Inquiry Into Allegations regarding efforts or attempts having been made to stop the investigations or prosecution of Truth and Reconciliation Commission Cases.

in the new year. That affidavit was due on 8 January 2026, but was filed on 9 January 2026 – one day out of time.

- 10 We humbly request that the Commission condone the filing of the affidavit one day out of time.
- 11 Our offices only received the Calata Group's answering affidavit on 6 January 2026, notwithstanding that the directives contemplated earlier filing. That left us with only one day to consult with our clients, draft the replying affidavit and have it deposed to and filed on time. That was not possible. The applicants were thus only able to file that replying affidavit on 13 January 2026 – within 5 days of its receipt.

LENGTH OF DELAY, PREJUDICE AND PROSPECTS OF SUCCESS ON MERITS

- 12 We humbly submit that in light of the above-mentioned circumstances, delays of one day (in relation to the replying affidavit to Adv Semenya SC's answering affidavit) and five days (in relation to the replying affidavit to the Calata Group), are not inordinately long, so as to cause prejudice. The late filing of these affidavits did not have a bearing on the filing of heads of argument on 14 January 2026 (as per the directive), and it is not anticipated that it will have a bearing on the hearing date - which is marked as 16 January 2026.
- 13 The recusal application bears prospects of success. The reasons brought by the applicants for Justice Khampepe's recusal are based on facts and undergirded by legal principles. The respondents' opposition to the application

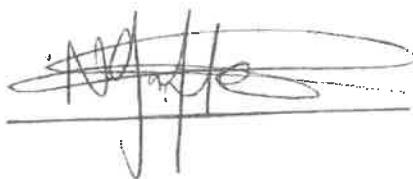
is largely based on delay. Courts have repeatedly held that delay in bringing a recusal application is not dispositive, without more. The overriding test is the interests of justice. The respondents do not engage with this in their answering papers.

WHEREFORE, I pray for an order as set out in the notice if motion.



IRVINE ARMOED

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and deposited before me at JOHANNESBURG on this the 15th day of January 2026, and that the provisions of the regulations contained in the Government Notice R1258 of the 21st of July 1972, as amended, and Government Gazette Notice R1648 of the 19th of August 1977, as amended, have been complied with.



COMMISSIONER OF OATHS

NOSIPOH CONNIE JAFTA
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TEL: 012 004 0424



ANNEXURE 7A1

03 December 2025

Kwinana Mbana Nkome Sibilya 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,



Champepe J
Chairperson

IFPA .

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ANNEXURE "IAZ"

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

1 Following the telephone conversation between the Evidence Leader, I Semenya 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.

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- 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,

Khanipepe J
Chairperson

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