

**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**

**HELD AT**

**Sc-i Bono Discovery Center, Corner Miriam Makeba & Helen Joseph Street,  
Newtown, Johannesburg**

**BEFORE**

**The Honourable Justice Sesi Khampepe (Judge RTD) - Chairperson  
The Honourable Justice Frans Diale Kgomo (Judge President RTD)  
Adv Andrea Gabriel (SC)**

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**NATIONAL PROSECUTING AUTHORITY'S OPENING STATEMENT**

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**A INTRODUCTION**

- 1 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 is established in terms of section 84(2)(f) of the Constitution to investigate allegations of public and national importance concerning efforts or attempts to stop the investigation or prosecution of cases arising from the work of the Truth and Reconciliation Commission.
  
- 2 The mandate of this Commission is specific and clearly defined. It is required to inquire into the period from 2003 to the present, and to determine whether, why, and to what extent attempts were made to influence or pressure members of the

South African Police Service or the National Prosecuting Authority of South Africa (NPA) to discontinue or prevent the investigation or prosecution of TRC-related cases. The Commission is further tasked with examining whether any members of those institutions improperly colluded with, or succumbed to, such pressure, and whether any unlawful conduct occurred warranting further investigation, prosecution, or other remedial action by the State, including the possible award of constitutional damages (a matter currently pending before the Court).

- 3 The National Prosecuting Authority appears before this Commission as a constitutional institution established under section 179 of the Constitution, entrusted with the power and duty to institute criminal proceedings without fear, favour or prejudice. The NPA recognises that the effectiveness of this Commission's mandate depends on a careful, fair, and constitutionally grounded examination of prosecutorial decision-making within its proper legal and institutional context.
- 4 The National Prosecuting Authority further appears before this Commission in response to the serious allegations that are the subject of its mandate. We do so with full appreciation of the gravity of the matters under inquiry, the profound public interest they engage, and the enduring significance of accountability for crimes arising from South Africa's past.
- 5 The NPA recognises that crimes arising from Truth and Reconciliation Commission ("TRC") matters occupy a unique and sensitive place in South Africa's constitutional landscape. They engage not only questions of criminal accountability, but also the unfinished business of historical justice, the dignity of victims and survivors, and the integrity of the constitutional promise that gross violations of human rights will not be met with impunity.
- 6 These matters are inextricably linked to South Africa's democratic transition and the State's obligations, both domestic and international, to investigate,

prosecute, and remedy serious violations of fundamental rights. How they are approached has profound implications for societal healing, public confidence in the justice system, and the credibility of constitutional institutions entrusted with giving practical effect to the values of accountability, responsiveness, and openness.

- 7 At the same time, the NPA respectfully underscores that the exceptional nature of these matters does not place them beyond the discipline of the Constitution. On the contrary, it is precisely because of their gravity and historical significance that the highest standards of fairness, impartiality, and legality must be observed. The pursuit of truth and accountability cannot be detached from adherence to the rule of law, institutional independence, and procedural fairness.
- 8 The Commission’s work must therefore strike a careful and principled balance. It must advance the imperative of truth-seeking and accountability in a manner that is consistent with constitutional guarantees, respects the separation of powers, and preserves the independence of prosecutorial and investigative institutions. Any departure from these foundational principles risks undermining not only the fairness of the proceedings, but also the legitimacy of their outcomes.
- 9 In this context, the NPA’s engagement is guided by its constitutional mandate to act without fear, favour, or prejudice, and to ensure that processes directed at addressing past atrocities strengthen, rather than compromise, the rule of law and the constitutional order they are ultimately meant to vindicate.
- 10 Therefore, the NPA’s participation is directed at assisting the Commission to understand how prosecutorial decisions relating to TRC cases were made during the relevant period; the legal, institutional, and policy frameworks within which those decisions occurred; and whether any improper interference, pressure, or collusion took place. The NPA does not approach these proceedings as an adversary, but as a constitutional body accountable for its conduct, mindful of its

independence, and committed to supporting a process that is fair, impartial, and firmly rooted in the rule of law.

## **B ROADMAP**

- 11 Following this introduction, the National Prosecuting Authority will address the Commission in a structured manner, guided by its mandate and the Terms of Reference.
- 12 First, the NPA will outline the Terms of Reference governing the Commission, identifying the scope of the inquiry, the period under investigation, and the specific questions the Commission has been tasked to determine.
- 13 Second, the NPA will explain its constitutional mandate and role as the singular prosecuting authority within the Republic, including the principles of independence, accountability, and legality that inform prosecutorial decision-making.
- 14 Third, the NPA will provide essential background to the matters under inquiry, including the historical context of apartheid-era crimes, the transition to constitutional democracy, and the legacy of Truth and Reconciliation Commission matters as they relate to criminal accountability since 2003.
- 15 Fourth, the NPA will present an overview of the evidence it intends to place before the Commission. This will include institutional records, policy material, and testimony directed at explaining how prosecutorial decisions were taken, the constraints under which they were taken, and whether any improper interference or pressure occurred during the relevant period.
- 16 As part of that overview, the NPA will clarify the position of former National Directors of Public Prosecutions and senior officials who will appear before the Commission, namely that they do so to account for periods of institutional

leadership and decision-making, and to assist the Commission in constructing an accurate and coherent institutional narrative.

- 17 The NPA will then address its assurance of cooperation, affirming its commitment to assist the Commission fully, transparently, and in good faith, consistent with its constitutional obligations and the rule of law.
- 18 Finally, the NPA will conclude with brief remarks directed at the proper framing of the Commission’s task, the importance of fairness and constitutional fidelity in the conduct of the inquiry, and the role of prosecutorial independence in ensuring that accountability for TRC-related crimes is pursued without fear, favour, or prejudice.

## **C TERMS OF REFERENCE**

- 19 The Judicial Commission of Inquiry is appointed in terms of section 84(2)(f) of the Constitution to investigate matters of public and national interest concerning allegations of interference with the investigation or prosecution of Truth and Reconciliation Commission (“TRC”) cases.
- 20 The Commission’s mandate is temporally confined to the period from 2003 onwards and is substantively directed at determining:
  - 20.1 whether, by whom, and to what extent efforts or attempts were made to influence or pressure members of the South African Police Service or the National Prosecuting Authority to halt the investigation or prosecution of TRC-related cases;
  - 20.2 whether any members of the SAPS or the NPA improperly colluded with, or succumbed to, such pressure;

- 20.3 whether unlawful conduct occurred warranting further investigation or prosecution by appropriate authorities; and
- 20.4 whether, in terms of law and fairness, the payment of constitutional damages to affected persons is appropriate.

21 In addition, the Commission may refer matters, where appropriate, to relevant law-enforcement agencies, government departments, or regulators, and is empowered under the Commissions Act to gather evidence, compel attendance, and secure the production of documents necessary to fulfil its mandate.

#### **Scope and Limits of the Mandate**

- 22 The Commission's mandate is carefully delineated. It is directed at specific allegations of interference, pressure, collusion, or unlawful influence in relation to TRC prosecutions and investigations during the defined period. Matters that fall outside these allegations, or that do not bear a direct and material connection to the questions expressly set out in the Terms of Reference, do not fall within the Commission's remit.
- 23 The Commission is not constituted as a general inquiry into the broader functioning of the criminal justice system, nor as a forum for revisiting all historical grievances arising from the apartheid era. Its authority and legitimacy derive from adherence to the mandate as proclaimed, guided by the Constitution, applicable legislation, and principles of fairness.
- 24 It is within this mandate that the NPA participates.

#### **D NPA'S MANDATE AND ROLE**

- 25 South Africa's constitutional democracy was not gifted. It was forged through systemic violence, repression, and the deliberate dehumanisation of black South Africans, whose lives, liberty, and dignity were routinely extinguished

in service of an unjust political order. Countless men and women were detained, tortured, disappeared, and killed. Many died unnamed and unrecorded, their families denied both truth and justice. The blood that was shed in that era is the very soil in which our constitutional order is rooted.

- 26 It is against that history that the obligation to investigate and prosecute apartheid-era crimes must be understood. These are not ordinary crimes. They represent the most serious violations of human rights, committed with the authority of the State, and often shielded by it. Accountability for such crimes is not discretionary. It is a constitutional imperative grounded in dignity, equality, and the rule of law.
- 27 For this reason, the Constitution vests the power to institute criminal proceedings exclusively in the National Prosecuting Authority of South Africa. That power is exercised on behalf of the people of South Africa, not private interests, not political actors, and not sectional agendas. It is entrusted to a single, independent prosecuting authority precisely because history has taught us the catastrophic consequences that follow when prosecutorial power is fragmented, captured, or exercised outside constitutional control.
- 28 The National Prosecuting Authority's mandate, to prosecute without fear, favour, or prejudice, is therefore not incidental to our democracy. It is essential to its survival. It ensures that decisions to prosecute are guided by law, evidence, and principle, rather than vengeance, political convenience, or private pressure. It is also why private parties can never be vested with prosecutorial authority in place of, or parallel to, the NPA. To do so would undermine equality before the law, erode accountability, and reintroduce the very arbitrariness that the Constitution was designed to abolish.
- 29 The National Prosecuting Authority is the constitutional institution mandated to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to such prosecution. The establishment, powers, and functions of the NPA are founded upon section 179 of the Constitution of the

Republic of South Africa, 1996, and further elaborated in the National Prosecuting Authority Act 32 of 1998, hereinafter referred to as the NPA Act.

- 30 The NPA acts as the singular authority entrusted with prosecutorial decision-making within the Republic.
- 31 Section 179 subsection 1 of the Constitution provides that there shall be a single National Prosecuting Authority structured in terms of an Act of Parliament, which shall consist of a National Director of Public Prosecutions, Directors of Public Prosecutions, and prosecutors as may be appointed in accordance with the law. This provision establishes the NPA as the central body responsible for the control and management of all criminal prosecutions in South Africa, ensuring uniformity, accountability, and the consistent application of the rule of law throughout the Republic.
- 32 Section 179 subsection 2 of the Constitution vests the power to institute criminal proceedings on behalf of the State, and to carry out any functions incidental thereto, in the NPA. This constitutional mandate ensures that prosecuting authority remains independent of external control and is exercised solely in the interests of justice. Section 179 subsection 4 further highlights this independence by stipulating that national legislation must ensure that the prosecuting authority exercises its functions without fear, favour, or prejudice.
- 33 The NPA Act gives legislative effect to these constitutional provisions. In terms of section 3 of the NPA Act, the National Prosecuting Authority is established as a single prosecuting authority, structured under the control of the National Director of Public Prosecutions, an office I now occupy. The NDPP is the head of the NPA and is appointed by the President as contemplated in section 10 of the Act. The NDPP bears the responsibility of determining prosecutorial policy, issuing policy directives, and ensuring that the prosecution of offences is conducted in accordance with the law and the principles of fairness and consistency.

34 Section 20 of the NPA Act sets out the powers, duties, and functions of the prosecuting authority. It authorises the NPA to institute and conduct criminal proceedings on behalf of the State, to discontinue such proceedings when deemed appropriate, and to carry out all functions incidental to criminal prosecution. These powers are exercised subject to the Constitution, the NPA Act, and any directives issued by the National Director in terms of prosecutorial policy.

35 The NPA operates through various specialised units and offices, each established in accordance with section 7 of the NPA Act. These include the offices of the Directors of Public Prosecutions, who are responsible for prosecutions within specific jurisdictions, and specialised divisions such as the Specialised Commercial Crime Unit, the Sexual Offences and Community Affairs Unit, and the Asset Forfeiture Unit. Each of these components plays a distinct role in advancing the broader objectives of the prosecuting authority and ensuring effective delivery of justice.

36 Importantly, section 179 subsection 5 of the Constitution provides that the National Director of Public Prosecutions, as head of the NPA, must determine and issue a prosecution policy with the concurrence of the Minister of Justice. The NDPP must also issue policy directives which bind all members of the prosecuting authority. This constitutional arrangement balances independence with accountability by ensuring that the prosecutorial framework operates within democratically defined policy parameters while remaining free from political interference in individual cases.

37 The independence and integrity of the NPA are further safeguarded by section 32 of the NPA Act, which prohibits any person from improperly interfering with, hindering, or obstructing the prosecuting authority or any member thereof in the exercise of their duties. This statutory protection reinforces the principle that prosecutors must act only in accordance with the law, the evidence, and their professional conscience.

## **E OVERVIEW OF THE EVIDENCE THE NPA WILL PLACE BEFORE THE COMMISSION**

- 38 The evidence that will be placed before the Commission by the National Prosecuting Authority demonstrates a sustained, structured, and constitutionally compliant effort to investigate and prosecute matters emanating from the Truth and Reconciliation Commission process, particularly over the past decade and, more specifically, since 2019.
- 39 The National Prosecuting Authority wishes to state its position with precision and care.
- 40 The NPA does not accept nor reject that there has been political interference in the investigation or prosecution of TRC-related cases. Allegations to that effect form part of the matters under inquiry before this Commission and have not been conceded by the institution.
- 41 The current leadership of the NPA has no direct knowledge of any political interference, pressure, or collusion in relation to TRC cases during its tenure. No member of the present leadership has received any instruction, directive, inducement, or pressure-whether overt or covert-from any political office-bearer or other external actor to stop, delay, or influence the investigation or prosecution of TRC matters.
- 42 At the same time, the NPA does not purport to make definitive findings in relation to periods predating the tenure of the current leadership. The Commission has been established precisely to examine allegations relating to earlier periods, and it is neither appropriate nor necessary for the NPA, in its opening statement, to pre-empt the Commission's fact-finding function.

- 43 The evidence that will be placed before the Commission by the NPA will therefore be confined to matters within its institutional knowledge, records, and experience, particularly over the past six years. That evidence will demonstrate how prosecutorial decisions were made during this period, the safeguards that were in place, and the absence of any improper influence on those decisions.
- 44 Where courts have previously made findings or observations concerning historical failures or delays in TRC prosecutions, those findings speak for themselves. The NPA does not seek, through this Commission, either to endorse or to contest findings beyond what is supported by admissible evidence. Nor does it accept that delay, institutional weakness, or prosecutorial discretion, of themselves, constitute proof of political interference.
- 45 The NPA's participation in this Commission is therefore not premised on any admission of interference. It is premised on constitutional accountability, cooperation with a lawful inquiry, and respect for the Commission's mandate to determine, on the evidence, whether interference occurred, by whom, and in what circumstances.
- 46 The evidence to be placed before this Honourable Commission will demonstrate that, since 2019, the National Prosecuting Authority has undertaken deliberate, structured, and sustained measures to address matters emanating from the Truth and Reconciliation Commission process, within the confines of the Constitution, the National Prosecuting Authority Act, and binding prosecutorial policy.
- 47 First, the evidence will show that when the current leadership of the NPA assumed office, the institution was emerging from a period of profound institutional instability. The prosecuting authority had been weakened by years of governance failure, resource attrition, and leadership disruption. These challenges were not confined to TRC matters, but affected the NPA as a whole. TRC cases, which are among the most complex and resource-intensive matters

in the criminal justice system, were inevitably impacted by these broader institutional constraints.

- 48 Second, the evidence will show that TRC cases present unique and exceptional prosecutorial difficulties. These matters concern crimes committed several decades ago, frequently in circumstances marked by deliberate concealment, destruction of records, and systemic obstruction. In many instances, original police dockets, inquest records, post-mortem reports, and forensic exhibits were destroyed, lost, or never properly created. Witnesses and suspects have aged, relocated, or passed away. In some matters, even the basic factual building blocks required for investigation, dates, locations, identities, and causes of death, are incomplete or contested. The evidence will show that these realities impose severe evidentiary limitations that no prosecuting authority, acting lawfully and responsibly, can simply overcome by fiat.
- 49 Third, the evidence will demonstrate that the NPA responded to these challenges by adopting a prosecution-guided investigative model, strengthening coordination with the Directorate for Priority Crime Investigation (DPCI), and establishing dedicated capacity for TRC matters for the first time on a sustained basis. This included the appointment of dedicated prosecutors and investigators, the creation of the TRC Component within the office of the Deputy National Director of Public Prosecutions: National Prosecutions Service, and the implementation of structured national oversight, reporting, and accountability mechanisms across all divisions.
- 50 Fourth, the evidence will show that these interventions were not symbolic. They resulted in measurable progress. The number of TRC matters under active investigation increased substantially. Multiple historic inquests were re-opened and finalised. Several matters were placed on the criminal court roll. Convictions were secured in cases where the evidentiary threshold could be met. Where prosecution was not possible, decisions were taken transparently, supported by written legal analysis, and communicated to affected families. The evidence will

show that each prosecutorial decision was informed by the principles of legality, fairness, evidentiary sufficiency, and the constitutional right to a fair trial.

- 51 Fifth, the evidence will demonstrate that the NPA did not treat victim engagement as peripheral. Regular engagements were held with families, civil society organisations, and legal representatives. Prosecutors and investigators were directed to communicate progress, explain delays, and account for decisions. These engagements were structured to respect the independence of prosecutorial decision-making while recognising the dignity, pain, and legitimate expectations of families who have waited decades for answers. The evidence will show that transparency and accountability, rather than silence or avoidance, guided the NPA's approach.
- 52 Sixth, the evidence will show that allegations of political interference were not ignored. They were addressed institutionally and lawfully. Following judicial pronouncements, the NPA took steps to review its own systems and safeguards. Independent Senior Counsel was appointed to assess the adequacy of the measures implemented to protect prosecutorial independence in TRC matters. That review confirmed, in material respects, that the structural interventions adopted were appropriate, while identifying areas for further strengthening. The evidence will show that where concerns arose, they were escalated, examined, and addressed within the statutory framework governing the NPA.
- 53 Finally, The evidence placed before the Commission by the National Prosecuting Authority demonstrates that the investigation and prosecution of Truth and Reconciliation Commission (“TRC”) matters present exceptional and enduring difficulties that distinguish them fundamentally from ordinary criminal cases in that:
  - 53.1 First, the evidence establishes that these matters concern crimes committed decades ago, often between the 1960s and early 1990s, within a context of systemic state violence and deliberate concealment.

The TRC itself recorded the widespread and intentional destruction of state records, including police dockets, inquest files, post-mortem reports and intelligence documentation. As a result, many investigations commence without foundational evidentiary material, requiring extensive reconstruction of dockets from fragmentary secondary sources.

- 53.2 Second, the NPA's evidence demonstrates that the passage of time has materially degraded the evidentiary landscape. Many perpetrators, witnesses and victims are deceased; others are elderly, infirm, or unable to recall events with forensic precision. Physical crime scenes no longer exist, exhibits have been destroyed, and original forensic records are frequently unavailable. These factors substantially complicate the ability to meet constitutional fair-trial standards and the prosecutorial threshold of a reasonable prospect of conviction.
- 53.3 Third, the evidence shows that TRC investigations require specialised, resource-intensive methodologies that go beyond conventional policing. These include crime scene reconstruction decades after the fact, the use of expert forensic opinion in the absence of original material, archival research across multiple state departments, mutual legal assistance processes, and the tracing of historical chains of command. Such investigations are necessarily slow, incremental and vulnerable to delays beyond the control of prosecutors.
- 53.4 Fourth, the evidence demonstrates that prior to September 2021, TRC matters were dispersed across divisions with limited central oversight, contributing to uneven progress. The establishment of the dedicated TRC Component within the Office of the Head of the National Prosecutions Service represented a structural intervention aimed at correcting this fragmentation, improving accountability, and ensuring prosecution-guided investigations across all divisions.

53.5 Fifth, the evidence establishes that even after institutional reform, progress remains constrained by objective realities rather than by obstruction or improper influence. These realities include missing dockets, destroyed records, the death of key witnesses, complex litigation strategies employed by accused persons, repeated interlocutory applications, funding disputes relating to legal representation of accused persons, and the constitutional obligation to ensure fair trial rights in historic prosecutions.

54 Before dealing with these issues, the NPA will, as part of its evidence, briefly explain the prosecution process that governs every criminal matter in this country. This is not a matter of formality. It is essential to understanding both the mandate of this Commission and the constraints within which the NPA operates.

55 In South Africa's constitutional framework, the decision to prosecute does not arise from allegation, public pressure, or moral outrage alone. It arises only after a completed investigation has produced a police docket containing admissible evidence capable of sustaining a reasonable prospect of conviction. The prosecutorial role is triggered by the submission of that docket and proceeds through a structured, auditable process of screening, evaluation, and decision-making governed by law, policy, and constitutional principle.

56 The NPA's evidence will demonstrate that prosecutors are required to interrogate the contents of every docket in detail, assess the sufficiency and admissibility of the evidence, and determine both whether a prosecution is legally sustainable and whether it is in the public interest. Where the evidence is incomplete or inadequate, prosecutors are obliged to return the docket for further investigation. Where the evidentiary threshold is met, a formal decision to prosecute is taken, charges are framed, and the matter is enrolled in court.

57 This process is particularly significant in the context of TRC matters. Many of these cases do not arrive at the prosecution stage with complete or intact

dockets. Records have been destroyed, witnesses have died, forensic material is missing, and investigations often begin decades after the alleged offences. Prosecutors are therefore frequently required to guide investigations over extended periods before a prosecutorial decision can responsibly be taken.

- 58 Understanding this process is fundamental to this inquiry because it explains why delays, reversals, or decisions not to prosecute cannot be equated with inaction, indifference, or obstruction. They are often the consequence of constitutional obligations imposed on prosecutors to act only on the basis of evidence that meets the legal threshold required by law.
- 59 The NPA's evidence will show that adherence to this process is not a barrier to accountability. It is the safeguard that ensures prosecutions are lawful, fair, and capable of withstanding judicial scrutiny. Any assessment of whether investigations or prosecutions were improperly halted must therefore be undertaken with a clear appreciation of the prosecutorial process and the evidentiary constraints within which it operates.
- 60 In addition to the above, the NPA will place before this Commission concrete evidence of progress on TRC matters, including those matters in which the Foundation for Human Rights represents families. While the State is mindful that detailed investigative updates can be sensitive, it is nonetheless necessary to show, in objective terms, that these matters have moved—either to the criminal courts, to re-opened inquests, or to final prosecutorial decisions after the evidential position was fully assessed.
- 61 The evidence will show that, in relation to the Cradock Four, a third inquest has been re-opened and is part-heard, with evidence already led and further sittings arranged. In the Nyoka matter, the State has secured a conviction and sentence against one accused, with the remaining accused in a separated trial that has progressed to the stage where a section 174 discharge application has been refused, and judgment is pending. In the Highgate Hotel Massacre matters,

formal inquest proceedings have been heard with multiple affected persons testifying, and judgment is awaited. In the Haron matter, the inquest was re-opened, the original finding was overturned, and a formal prosecutorial decision was subsequently taken to decline prosecution. In the Haffejee matter, the re-opened inquest has been finalised and the DPP took a decision to decline prosecution in circumstances where the evidential landscape is materially compromised, including by the death of witnesses.

- 62 The evidence will further show progress in matters presently on the criminal court roll, including the COSAS Four prosecution, the Simelane prosecution (where interlocutory issues such as section 77(3) processes have delayed finalisation), and joined prosecutions in KwaZulu-Natal relating to the deaths of Ms Kubheka and Mr Phewa, where trial readiness has been affected by disputes around accused persons' legal representation. In other matters, the NPA has taken decisions to hold formal inquests, including in the Dr Rick Turner matter, with preparatory steps underway such as tracing witnesses, translating and indexing documents, and engaging with families and legal representatives.
- 63 In addition, the evidence will highlight matters where progress is constrained by the inherent difficulties of TRC investigations—most notably, the inability to trace original dockets, post-mortem records, or inquest files, and the necessity of reconstructing evidentiary records decades after the events. The Jacobs matter in the Northern Cape is a clear example: despite confirmed indications that an inquest was held, key records remain missing, witness availability is limited, and the investigation depends on reconstruction efforts, archival searches, and expert-assisted scene reconstruction.
- 64 Beyond the individual FHR-related matters, the NPA will show that progress has also been made on matters even where FHR is not involved including and not limited to the re-opened inquest into the death of Mr Stephen Bantu Biko, the re-opened inquest into the death of Mr Griffiths Mxenge, the Northcrest Five

(Messrs Mzwandile Mfeya, Sandiso Yeso, Samora Mpendulo, Sadat Mpendulo and Thando Mthembu), the re-opened inquest into the death of Mr Boo Mantyi, the inquest into the deaths of Mr Zama Sokhulu Mlobeli, Mr Mthunsi Vlemeseni Njakazi, Mr Oupa Ronald Madondo amongst others.

- 65 Ultimately, the NPA's evidence on progress is placed before this Commission for a single purpose: to demonstrate that TRC matters have not been abandoned, and that the work has advanced through lawful prosecutorial steps—investigation, inquest processes where required, the institution of prosecutions where the evidential threshold is met, and reasoned decisions where it is not.
- 66 The NPA will further explain that, by their very nature, a number of TRC matters cannot be ventilated fully or publicly at this stage. Ongoing investigations, pending prosecutorial decisions, and matters already enrolled on the criminal court roll are subject to well-established principles of prosecutorial confidentiality, fairness to accused persons, and the integrity of the criminal justice process. Premature public disclosure of investigative detail, evidentiary assessments, or contemplated charges would risk prejudicing future prosecutions, contaminating witness testimony, and undermining the right to a fair trial.
- 67 The evidence will show that this restraint is not a matter of avoidance or opacity, but a constitutional and legal necessity. Prosecutors are obliged to protect the confidentiality of investigations, particularly in cases of extreme sensitivity such as TRC matters, where witnesses are vulnerable, families are deeply affected, and allegations involve the most serious crimes. In certain instances, public disclosure could compromise witness safety, expose investigative strategies, or irreversibly weaken cases that are still being developed.
- 68 Accordingly, the NPA's approach before this Commission has been to place sufficient information on record to demonstrate progress, institutional commitment, and lawful decision-making, while withholding detail where

disclosure would undermine the administration of justice. This balance reflects the NPA's constitutional duty to act transparently and accountably, while at the same time safeguarding prosecutorial independence, due process, and the integrity of ongoing and prospective prosecutions.

- 69 In sum, the evidence will show an institution grappling conscientiously with an extraordinarily difficult legacy: seeking accountability where it is legally possible, acknowledging hardship where it is not, and consistently acting within the constitutional mandate to prosecute without fear, favour, or prejudice. The Commission is invited to assess this record not through the lens of hindsight or expectation, but against the legal, evidentiary, and institutional realities within which the NPA is required to operate.

### **The Position of Former NDPPs and Officials**

- 70 Before any suggestion is made that the current leadership of the National Prosecuting Authority is seeking to distance itself from decisions taken under prior administrations, it is important to place the position in proper context. The Commission is at liberty to, and has in fact, gathered evidence directly from those who occupied leadership and operational roles at the relevant times. In support of this process, the NPA has made available the documents sought and has facilitated access to institutional records to enable a full and informed account to be placed before the Commission.
- 71 The NPA recognises that institutions do not operate in the abstract; they act through office-bearers. Given the nature of this inquiry, it would be neither appropriate nor accurate for the current leadership to purport to speak authoritatively to decisions, processes, or constraints that arose during periods when other incumbents were responsible for the institution. It is precisely for this reason that former National Directors of Public Prosecutions and relevant former

employees are best placed to account for matters falling within their respective tenures.

- 72 Consistent with this approach, the NPA has ensured that former office-bearers and employees have been afforded access to relevant documentation and, where necessary, funding to secure legal representation, so as to assist the Commission in the effective discharge of its mandate. This has been done to promote candour, accuracy, and institutional accountability, rather than to fragment or dilute responsibility.
- 73 At the same time, the current leadership was mindful of the need to avoid any perception of influence over former employees or of interference with their evidence. To safeguard the integrity of the process, and to manage the risk of actual or perceived conflicts of interest, it was both prudent and appropriate that former incumbents be supported to obtain independent legal representation. This approach respects prosecutorial independence, protects the fairness of the proceedings, and reinforces the credibility of the Commission's work.
- 74 Former National Directors of Public Prosecutions and senior officials of the National Prosecuting Authority appear before this Commission not in their personal capacities, but to account for periods during which they exercised constitutional and statutory responsibilities within the prosecuting authority.
- 75 Their evidence is directed at assisting the Commission to understand the institutional context, decision-making frameworks, and operational realities that prevailed during their respective tenures. They are not before the Commission as accused persons, nor to defend individual reputations, but to contribute to a coherent institutional record in relation to matters falling within the Commission's Terms of Reference.
- 76 Each former NDPP and official is able to speak only to matters within their personal knowledge and period of office. Their testimony must therefore be

understood within those temporal and factual limits. The NPA does not suggest that any former office-bearer represents the institution beyond the tenure during which they held office, nor that they can account for decisions taken before or after their respective terms.

- 77 Importantly, the appearance of former NDPPs and officials before the Commission must not be understood as an acceptance by the NPA that improper interference occurred during their periods of office. Allegations of interference are matters for the Commission to determine on the evidence. The NPA neither concedes nor pre-judges those allegations, and the evidence of former officials is tendered to assist the Commission in its fact-finding role, not to substitute for it.
- 78 Where former NDPPs or officials testify about challenges faced by the institution, whether structural, legal, evidentiary, or resource-based, such evidence is relevant to understanding prosecutorial outcomes and delays. It does not, without more, establish improper influence, collusion, or abdication of prosecutorial independence. The distinction between institutional constraint and unlawful interference is central to the proper evaluation of their evidence.
- 79 Former NDPPs and officials are legally represented pursuant to an NPA brief, reflecting that their evidence concerns institutional leadership and prosecutorial governance rather than personal liability. At the same time, they do not testify under the instruction of the current leadership, nor are they positioned as mouthpieces for the present-day NPA. Their duty is to give truthful evidence to the Commission, consistent with their constitutional obligations.
- 80 The NPA respectfully submits that the evidence of former NDPPs and officials should be approached with the same constitutional discipline that governs the Commission's work more generally: with fairness, without inference beyond the evidence, and with due regard to the importance of prosecutorial independence.

The Commission’s task is not to retrospectively attribute motive or impropriety absent proof, but to assess, on the evidence, whether efforts or attempts to interfere occurred, and whether any such conduct meets the legal threshold contemplated in the Terms of Reference.

- 81 It is in that spirit that the NPA presents the evidence of former NDPPs and officials—to assist the Commission in building an accurate institutional account, grounded in law, evidence, and constitutional principle.

## **F ASSURANCE OF COOPERATION**

- 82 The National Prosecuting Authority confirms that it will participate fully and in good faith in the Commission’s proceedings within the scope of its mandate, and will engage constructively in all processes that are lawful, procedurally fair, and objectively directed at the issues defined by the Terms of Reference. In doing so, the NPA remains committed to assisting the Commission to discharge its functions meaningfully and effectively, while acting consistently with its constitutional mandate, prosecutorial independence, and the rule of law.

## **G CONCLUSION**

- 83 The NPA respectfully urges the Commission to undertake its work in a manner that is faithful to the Constitution, attentive to the rule of law, and mindful of the delicate balance between accountability and institutional independence. The task of the Commission is not only to uncover whether interference occurred, but to do so in a way that strengthens, rather than weakens, the constitutional architecture designed to prevent the recurrence of past abuses.
- 84 In discharging its functions, the Commission is called upon to examine allegations of interference and obstruction not in isolation, but within the broader

constitutional architecture that assigns responsibility, authority, and accountability to specific institutions. That architecture exists to protect both the integrity of prosecutions and the fairness of the process by which they are pursued.

- 85 After all, Investigations, particularly in matters of this nature and complexity, necessarily take time. That time is not taken lightly. It is required to ensure that investigations are thorough, evidence-driven, and capable of sustaining the weight of the issues at stake. Experience has shown that poorly conducted investigations, which culminate in unsuccessful outcomes, do not advance justice and often compound the pain already endured by families.
- 86 Decisions whether to prosecute, or not to prosecute, are therefore approached with the utmost care. Such decisions carry profound and lasting consequences—not only for victims and witnesses, but also for accused persons and their families. In exercising this responsibility, the National Prosecuting Authority acts in accordance with its constitutional mandate, independently and without fear, favour, or prejudice.