

**NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL  
COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR  
ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR  
PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES**

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**INTRODUCTION AND ESTABLISHMENT OF THE COMMISSION**

1. On 29 May 2025, the President of the Republic of South Africa issued Proclamation Notice No. 264 of 2025, establishing the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases ("the Commission").
2. The Commission was appointed in terms of section 84(2)(f) of the Constitution, 1996. The Honourable Madam Justice S. Khampepe serves as Chairperson, with the Honourable Mr Justice F. D. Kgomo and Adv A. Gabriel SC as members.
3. In terms of its mandate, the Commission is required to inquire into, make findings, report on, and make recommendations concerning allegations that, since 2003, efforts or attempts were made to influence, pressure, or otherwise improperly prevent the South African Police Service and/or the National Prosecuting Authority from investigating or prosecuting TRC cases.

The Terms of Reference further require the Commission to determine whether officials within these institutions colluded in such efforts, and whether further action—including investigations, prosecutions, or the payment of constitutional damages—is warranted.

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

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

5. This notice is issued in terms of Rule 3.3 of the Rules of the Commission, read with the Regulations made under Government Notice R.278 of 2025.
6. The Commission's Evidence Leaders intend to present the evidence of one or more applicants in the Calata case, and any person who in the opinion of the Evidence Leaders possesses information that relates to the paragraph **Error! Reference source not found.** allegations against you and is relevant to the Commission's work.
7. The specific date and venue for the hearing at which such evidence will be presented will be communicated to you in due course.

8. Below is an extract from the Calata matter's founding affidavit, with corresponding paragraph numbering, which implicate, or may implicate, you in allegations regarding efforts or attempts to halt or suppress the investigation or prosecution of TRC matters. Further details of the Calata proceedings, including the said affidavit, are available on the Commission's website at [www.trc-inquiry.org.za](http://www.trc-inquiry.org.za).

## **PARTICULARS OF IMPLICATION**

### ***"Extracts from Calata Founding Affidavit"***

182 *Ackermann also decided to prosecute three former SB members for their role in the 1989 poisoning of Reverend Frank Chikane, the former head of the South African Council of Churches. This was because all the evidence implicating them had already been led in the prosecution of Wouter Basson and no further investigations were necessary.*

182.1. *Basson was formerly the head of South Africa's secret chemical and biological warfare project. The three former policemen were former Major- General Christoffel Smith, Colonels Gert Otto and Johannes 'Manie' van Staden. None had applied for amnesty for this crime.*

182.2. *According to Ackermann in his affidavit in Nkadimeng 2 ([TN8](#) at pp 218 –235 at para 17) (**FA8**), on the morning of 11 November 2004, the police were on the verge of effecting the arrests of three*

suspects. On the same morning Ackermann received a phone call from the late Jan Wagener (**Wagener**), the attorney for the suspects. Wagener told Ackermann that he would receive a phone call from a senior official in the Ministry of Justice, and that he would be told that the case against his clients must be placed on hold.

182.3. Shortly thereafter Ackermann received a phone call from an official in the then Ministry of Justice. He was informed by the said official that a decision had been taken that the Chikane matter should be placed on hold pending the development of guidelines to deal with the TRC cases. Ackermann refused to follow this order and told the official that only the NDPP could give him such an instruction. The official told him that he would shortly receive a phone call from Adv Ramaite, the Acting NDPP.

182.4. A few minutes later Ramaite called Ackermann and instructed him not to proceed with the arrests. Ramaite also ordered Ackermann to immediately halt work on all TRC cases. Ackermann indicated in his affidavit that it could be safely assumed that the Acting NDPP was instructed at a political level to suspend these cases.

183 According to an interview conducted by the author Ole Bubenzer with Wagener in Pretoria on 8 May 2006 (reflected at page 130 of

*Bubenzer's book), when Wagener was advised that the arrests were going to be affected, he immediately intervened politically and put great pressure on the government to stop the proceedings. Wagener claimed that authorization to suspend the arrests came from President Mbeki "in an extraordinarily swift move".*

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219 *Following Pikoli's decision to proceed with the Chikane attempted murder case, the three suspects made representations to him in terms of the Guidelines for a decision not to prosecute. Pikoli set up a team under Adv JP (Torie) Pretorius to review their representations which concluded after a few months that the three had declined to disclose the full truth. Ackermann refused to participate in this review as he viewed the process as unconstitutional. After considering the review report, Pikoli wrote to the lawyers of the three suspects in July 2006 informing them that their representations were unsuccessful, and he intended to pursue with the prosecution.*

220 *The decision to prosecute those implicated in the attempted murder of Chikane was the tipping point which saw the complete unravelling of the attempts by the NPA to hold apartheid-era perpetrators accountable for their crimes.*

*The politicians intervene*



221. During 2006, it became increasingly clear to government that NDPP Pikoli and PCLU head Ackermann would pursue TRC cases when they were in a position to do so. The first complaint levelled by government functionaries against the NPA was that Ackermann was seen as a loose cannon.
222. Pikoli, in his affidavit in Nkadimeng 2 ([TNZ](#) at p 170) (**FA22**), records that in early 2006, SAPS Commissioner Jackie Selebi objected to Ackermann's participation in the TRC cases claiming that he intended to prosecute the leadership of the ANC. This was notwithstanding Pikoli's denial that any such plans were in place. Pikoli reminded Selebi that Ackermann was appointed as PCLU head under Presidential proclamation, and it was not for the SAPS to dictate who should discharge the mandate given to the PCLU.
223. Pikoli then approached the Presidency in order to seek the collaboration of the role-players in the ITT to support the TRC cases. A meeting was arranged in mid-2006 by Reverend Frank Chikane, who was then Director General in the Presidency. Coincidentally this was the same Chikane who was the victim of poisoning by the SB in 1989. The meeting was attended by Chikane, the Directors General of Justice and the NIA, Selebi, the Secretary of the Defence Secretariat, Mr. Loyiso Jafta, Chief Director in the Presidency and Pikoli. Selebi again complained about Ackermann's involvement in the process.

224. Later in 2006, Pikoli was summoned to a meeting which was convened at the home of Minister Zola Skweyiya, then Minister of Social Development. The meeting was attended by the Minister of Police Charles Nqakula, Minister of Defence Mosiuoa Lekota, Thoko Didiza, Acting Minister of Justice (representing Minister Brigitte Mabandla who was indisposed) and Mr. Jafta. The meeting was called by Acting Minister Didiza. Pikoli was advised that the meeting was going to deal with the prosecution in the Chikane matter.

225. At this meeting it became clear that there was a fear that cases like the Chikane matter would open the door to prosecutions of ANC members. In his affidavit in Nkadimeng 2 (**FA22**), Pikoli quoted from his affidavit filed before the Ginwala Commission as to what transpired at this meeting:

“The Minister of Safety and Security was concerned about the decision to proceed with the prosecution and with Advocate Ackermann’s involvement in the process and the issue of whether it was Advocate Ackermann or me who was behind the decision to prosecute.

The Minister of Social Development was concerned about the impact of the decision to prosecute on the ranks of ANC cadres who were worried that a decision to prosecute in the Chikane matter would then give rise to a call for prosecution of the ANC cadres themselves arising out of their activities pre-1994.

*The Minister of Defence had concerns about where the decision to prosecute rested – did it rest with me or did it rest with Advocate Ackermann.*

*I explained to the Ministers that the decision to proceed with the prosecution rested with me as did all other decisions in regard to post- TRC prosecutions being considered by the PCLU. I assured them that no prosecution would be undertaken without my specific direction and reiterated my concern about the delay in the process particularly in view of the requirement that I report to parliament on these matters.*

...

*The Minister of Defence appeared satisfied with my explanation that I would exercise the decision as to whether there was a prosecution or not. The Minister of Safety and Security appeared to continue to be worried about the involvement of Advocate Ackermann. I have no recollection of a particular position adopted by the Acting Minister of Justice.”*

226. *This meeting pointed to what was probably the overriding concern of government, namely that pursuing a TRC case, like the Chikane matter, would place pressure on the NPA to pursue cases against ANC members.*

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231. *Meanwhile Pikoli had received further representations from the suspects in the Chikane matter claiming that they had received indemnity against*



*prosecution in terms of the Indemnity Act 35 of 1990. Pikoli sought an independent opinion from a senior counsel who advised him in November 2006 that the claimed indemnities were no bar to prosecution and that Act 35 of 1990 had been repealed in 1995.*

232. *Ramaite reported to Pikoli that at the ITT meeting on 25 October 2006, Ackermann had presented an audit report of all the TRC cases in the possession of the PCLU. Ramaite also reported to Pikoli that at the 6 November 2006 meeting of the ITT, Joseph Lekalakala, a senior officer in the SAPS Crime Intelligence Division, stated that National Commissioner Selebi believed that Chikane was not interested in a prosecution. However, Ackermann advised that Chikane had left the matter in the hands of the NPA.*

233. *In early December 2006 Pikoli was advised by Ramaite that Selebi was insisting that Chikane had not been consulted about the proposed prosecution. This claim was rejected by Pikoli since he knew that Chikane had been extensively consulted. According to Pikoli, he had personally met with Chikane during 2006 and 2007, who advised that while he may have forgiven his perpetrators, insofar as the application of the law was concerned, the matter must take its ordinary course. Pikoli asserted that Chikane said that if a decision was made to prosecute, he would accept that. Although Pikoli was aware that Ackermann had discussed the matter with Chikane as far back as 2004, he instructed Ackermann in December 2006 to once again visit Chikane to confirm his position.*

234. According to Ackermann, on 6 December 2006, the PCLU received a letter from the head of the SAPS Legal Support section, Major General PC Jacobs, representing the view of the National Commissioner, which bluntly stated that before any prosecutorial decision could be made in respect of the TRC cases, the Task Team must submit a final recommendation to a Committee of Directors General in respect of each case, which in turn must advise the NDPP who to prosecute or not.

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240. Towards the end of January 2007, Ackermann and Adv Mthunizi Mhaga (also of the PCLU) reported to Pikoli that they had met with Chikane on 22 January 2007 who confirmed that he was not against a prosecution and that the matter should take its course. Pikoli then wrote to the attorneys of the three suspects on 25 January 2007 and informed them that the matter would now proceed.

241. Around this time, the former Minister of Police, Adriaan Vlok, and the former Commissioner of Police, General Johann van der Merwe, both made representations to Pikoli in terms of the Guidelines. They both admitted to authorising the murder of Chikane and requested Pikoli not to prosecute them in the light of this disclosure. However, according to Pikoli they declined to make full disclosure in response to requests for

information, and he declined to grant them immunity from prosecution in terms of the Guidelines.

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253. Also in July 2007, after several months of negotiation between the PCLU and the attorneys of the accused in the Chikane attempted murder case, a plea and sentence agreement was reached. On 10 July 2007, Pikoli sent a memorandum to the Minister informing her of the fact that the case had been set down for hearing in court on 17 August 2007 and that all the accused will plead guilty to a charge of attempting to murder Chikane by means of poisoning. She was also advised that the court would be asked to confirm the plea and sentencing agreement.

254. ...

255. On 17 August 2007, those implicated in the Chikane case pleaded guilty in exchange for suspended sentences in terms of section 105A of the Criminal Procedure Act. Vlok and Van der Merwe were sentenced to ten years in prison suspended for five years, while the other three received five-year prison sentences, suspended for five years. A copy of the plea and sentence agreement is annexed hereto marked **FA35**.

256. According to Ackermann, this case ought to have opened the door to the prosecution of General Basie Smit, who succeeded Van der Merwe as Commander of the SB in October 1988, as well as other senior officers of the both the SAPS and the SADF. However, this was now the end of the line. No further cases were pursued which, according to Ackermann, can be attributed wholly to the political interference in the work of the NPA.

257. According to Pikoli in his affidavit in Nkadimeng 2, he would have preferred a full prosecution because Adriaan Vlok and Johan van der Merwe only made limited disclosure. They confined their disclosure to facts that for the most part were already in the public domain and declined to reveal information about the compiling of the hit lists and who was behind their compilation. They did not reveal other names on the lists, nor the modus operandi of the other hits or the identities of the other masterminds and perpetrators.

258. While a full prosecution would have produced greater truth and accountability, Pikoli was of the view that the political headwinds were too strong. He stated that:

*“there was strong political resistance to this prosecution and the pursuit of the other political cases. It was clear to me that the government, and in particular the then Minister of Justice, did not want the NPA to prosecute those implicated in the Chikane case. This was due to their fear of opening*



*the door to prosecutions of ANC members, including government officials. Moreover, I could not rely on the police to investigate this case, and the other political cases, thoroughly. Therefore, a plea and sentence bargain was in my view the most appropriate compromise in the circumstances.”*

259. *Pikoli’s concerns proved to be prescient. Within a few weeks he was removed from office and the Chikane case was the last indictment issued in a TRC related case for some 10 years. The TRC cases would remain suppressed until the family of Nokuthula Simelane went to court in 2015 seeking an order compelling a prosecutorial decision (Nkadimeng 2).*

*The knives are out for Pikoli*

260. *Shortly after the Chikane plea and sentence agreement had been confirmed in court, a newspaper article appeared in the Rapport newspaper of 19 August 2007 in which it was claimed that the NPA was preparing to prosecute ANC leaders. According to Pikoli, the claim was made on the basis of a note that Ackermann had prepared more than four years previously, when he first looked at the universe of possible cases. That note was forged to suggest it was made recently and that Ackermann was targeting the ANC leadership. A copy of this newspaper article is annexed hereto marked **FA36** ([VPP4](#) at p211). The NPA responded by way of a press*



*statement dated 21 August 2007 in which the allegations made in the Rapport were denied. A copy of this press statement is annexed hereto marked **FA37** ([VPP5](#) at p213).*

#### *Ginwala Enquiry*

275. *The years following the suspension from office of Pikoli and the removal of Ackermann from the TRC cases were marked by an almost total absence of activity on the TRC cases.*
276. *On the same day that Pikoli was suspended on 23 September 2007, the President announced the creation of the Ginwala Enquiry into the fitness of Pikoli to hold the office of the NDPP in terms of section 12(6)(a) of the NPA Act. Dr Frene Ginwala was appointed on 28 September 2007 to head the inquiry.*
277. *According to Dr Ramaite, then the Acting NDPP, when the President established the Ginwala Commission, “the SAPS declined to further investigate the matters, pending the conclusion of the Commission.” This was disclosed in his 31 January 2013 letter to Thembi Nkadimeng (**FA26**). The reference to a decision to refuse to “further investigate” is a misnomer since the SAPS had already refused to investigate the TRC cases as far back as 2003. There was no legal or other basis for the SAPS to continue refusing to investigate the TRC cases pending the outcome of the Ginwala Enquiry.*

278. *In the Ginwala Enquiry, the government made a number of complaints against Pikoli, one of them being that Pikoli's handling of the post-TRC cases did not show "sensitivity to the victims" and "an appreciation of the public interest issues that were mandated by the Prosecution Policy."*

279. *It was alleged that the NPA concluded plea bargains with Van der Merwe and others (the Chikane case) without discussing them with the ITT or informing the Minister, "notwithstanding the potential impact on national security". The nub of the matter was of course Pikoli's decision to move ahead with the prosecution of Vlok and the others in the face of opposition from the political level.*

*In the evidence tendered by the government, an add-on complaint was the "outrage" expressed by Chikane about the lack of truth revealed by the plea bargain in relation to the apartheid state's clandestine programme of killing through nefarious means, such as poisoning. It is likely that this concern was included to dress up the main complaint with some moral indignation, since the lack of truth of apartheid-era violations was hardly a concern of those behind the removal of Pikoli.*

280. *Dr Ginwala was moved to say in her finding that: This complaint also touches very closely on the **constitutional guarantee of independence of the NPA** to prosecute or not to prosecute, and to do so without fear, favour or prejudice. (Bold added).*

281. *Nonetheless Dr Ginwala did not take this burning issue further as the government abandoned its complaint against Pikoli in respect of the TRC cases. The likely reason was to curtail closer examination of the role of government in relation to the cases. A copy of the [Ginwala Commission Report](#) dated 4 November 2008 can be made available on request.*

*The extracts of her findings on the TRC cases complaint are annexed hereto marked **FA40**.*

282. *Dr Ginwala concluded that the government had not made out a case that Pikoli was not fit for office by reason of his handling of the TRC cases. Indeed, she concluded more generally in her final report that the balance of grounds advanced by government for his suspension had not been established.”*

## **YOUR RIGHTS AND OBLIGATIONS**

9. You are entitled to attend the hearing at which the evidence relating to the above allegations, and any other that may be led against you, is presented. You may be represented by a legal practitioner of your choice.
10. Rule 3.4 requires that, within fourteen (14) calendar days of this notice, you submit a statement in the form of an affidavit responding to the allegations. Your affidavit must specify which parts of the evidence are disputed or denied, and set out the grounds for such dispute or denial.

11. If you wish to—

- a. give evidence yourself;
- b. call any witness in your defence; or
- c. cross-examine the witness whose evidence implicates you,

you must apply in writing to the Commission for leave to do so within fourteen (14) calendar days of this notice, accompanied by your affidavit.

12. You may also apply for leave to make written and/or oral submissions regarding the findings or conclusions that the Chairperson should draw from the evidence relating to you.

### **COMMUNICATION WITH THE COMMISSION**

13. All correspondence, applications, and affidavits must be directed to: The Secretary of the Commission at [secretary@trc-inquiry.org.za](mailto:secretary@trc-inquiry.org.za).

14. **DATED** at **Sci Bono DISCOVERY CENTRE** Johannesburg on this 19 day of September 2025.

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