IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 5245/25

In the matter between:

THABO MVUYELWA MBEKI	1st Applicant
BRIGITTE SYLVIA MABANDLA	2nd Applicant

And

LUKHANYO BRUCE MATTHEWS CALATA	1st Respondent
ALEGRIA KUTSAKA NYOKA	2nd Respondent
BONAKELE JACOBS	3rd Respondent
FATIEMA HARON MASOET	4th Respondent
TRYPHINA NOMANDLOVU MOKGATLE	5th Respondent
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FOUNDATION FOR HUMAN RIGHTS	23rd Respondent
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	24th Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	25th Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	26th Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	27th Respondent
MINISTER OF POLICE	28th Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	29th Respondent

In re:

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NOTICE OF MOTION

PLEASE TAKE NOTICE that the first and second applicants ("**applicants**") will, on a date and time arranged with the Registrar, apply for an order in the following terms:

1. The applicants for intervention are granted leave to intervene as **7th and 8th respondents** (respectively) in the main proceedings before this Honourable Court, under case number 5245/25;

2. Directing the applicants in the main application to serve on the applicants for intervention as 7th and 8th respondents the complete papers in the main proceedings, including all annexures, within a time period permitted by this Honourable Court;

3. The applicants for intervention, as the 7th and 8th respondents, are directed to file their answering affidavits to the applicants' application in the main proceedings within a time period permitted by this Honourable Court;

4. Any respondent who opposes this application is liable to pay the costs of such opposition;

5. Granting the applicants further and/or alternative relief.

PLEASE TAKE FURTHER NOTICE that the applicants rely on the attached affidavits of **Mr Thabo Mvuyelwa Mbeki** and **Ms Brigitte Sylvia Mabandla** to support of this application.

PLEASE TAKE FURTHER NOTICE that the applicants have appointed Boqwana Burns Attorneys at 1st Floor, 357 Rivonia Boulevard, Rivonia, Johannesburg, as the address where they will accept notice and service of all processes in these proceedings. Boqwana Burns Incorporated will accept service electronically at irvine@boqwanaburns.com and aneesa@boqwanaburns.com.

PLEASE TAKE FURTHER NOTICE that should you intend to oppose this application, you are required to notify the applicants' attorneys within five days from the date of service of this application, and to appoint an address in such notice as meant in rule 6(5)(b) of the Uniform Rules of Court, at which you will accept notice and service of all documents in this presence. You are then also required to deliver your answering affidavit within 15 days of giving such notice.

DATED at **Rivonia** on 31 March 2025.

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TO:

The Registrar of the Above Honourable Court

AND TO:

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AND TO:

State Attorney, Pretoria
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FOUNDING AFFIDAVIT

I, the undersigned,

THABO MVUYELWA MBEKI

do hereby make oath and say:

TM. 3

1. I am an adult male and the former President of the Republic of South Africa. I served as South Africa's President from 14 June 1999 to 24 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. Where I rely on facts not within my personal knowledge, I provide the necessary confirmatory affidavits.

PARTIES

3. I am the first applicant.

4. The second applicant is Ms Brigitte Sylvia Mabandla ("**Ms Mabandla**"). For present purposes, Ms Mabandla was the Minister of Justice and Constitutional Development ("**Minister of Justice**") from 2004 to 2008. Her supporting affidavit is attached to this affidavit.

5. The first to 23rd respondents instituted an application before this Honourable Court, under case number 5245/25 ("**main application**"). They are respectively described in the founding affidavit in the main application (in paragraphs 4, 33 to 55). I do not wish to unduly lengthen this affidavit by repeating those descriptions here.

6. The 24th to 29th respondents consist of the Government of the Republic of South Africa, the President of the Republic, the Minister of Justice and

Constitutional Development, the National Director of Public Prosecutions, the Minister of Police and the National Commissioner of the South African Police Service. They have also been described in the main application (paragraphs 56 to 61).

PURPOSE OF AFFIDAVIT

7. I depose to this affidavit in support of mine and Ms Mabandla's application to intervene as the 7th and 8th respondents (respectively) in the main application. Our application is made in terms of rule 12 of the Uniform Rules of this Honourable Court.

8. The applicants in the main application ("**Calata *applicants***") seek the following relief:

   8.1 a declarator that the 1st to 6th respondents' ("**government respondents**") conduct in unlawfully refraining and/or obstructing the investigation and/or prosecution of apartheid-era cases that were referred to the National Prosecuting Authority ("**NPA**") by the Truth and Reconciliation Commission ("**TRC**") ("**the TRC cases**") or to otherwise unlawfully abandon or undermine such cases:

      8.1.1 violates the *Calata* applicants' rights, as well as those of the families of the victims and survivors of the apartheid-era crimes ("**the families**"), to equality, dignity, life and bodily integrity in terms of sections 9, 10, 11 and 12 of the Constitution;

8.1.2 is inconsistent with the values in section 1 (a) and the rule of law as enshrined in section 1 (c) of the Constitution;

8.1.3 is inconsistent with the principles, values and obligations imposed by the Promotion of National Unity and Reconciliation Act 34 of 1995, read with the postscript to the Interim Constitution;

8.1.4 breaches the duties and obligations contained in the Constitution, the National Prosecuting Authority Act 32 of 1998 and the South African Police Service Act 68 of 1995, to investigate and prosecute serious crime, and not to interfere with the legal duties of prosecutors and law enforcement officers; and

8.1.5 is inconsistent with South Africa's international law obligations in terms of sections 231 to 233, read with section 39(b), of the Constitution.

9. The phrase "TRC cases" was used with regard to two instances:-

9.1 the cases referred to the NPA by the TRC - the National Executive never interfered with the NPA with regard to these "TRC cases".

9.2 the cases that the National Executive foresaw would arise after the TRC had completed its work, sometimes referred to as "unfinished TRC business". These were also referred to as "TRC cases". It was with regard to these "TRC cases" that the 2003 speech refers. The

issues about 'Prosecution Policy' and the 'Presidential Pardons' refer only to this second set of "TRC cases".

10. Anyway, on the back of what is set out in paragraph 8, the *Calata* applicants pray for the payment of constitutional damages by the South African government.

11. The applicants also seek a declarator that the failure and/or refusal by the current President, the 2nd respondent, to establish a commission of inquiry into the suppression of the investigations/prosecution of the TRC cases is inconsistent with his responsibilities under sections 84(2)(f) read with ss1(c), 7(2), 83(b) and 237 of the Constitution and violates the applicants' rights, as well as those of the families, to equality, dignity, life and bodily integrity in terms of sections 9, 10, 11 and 12 of the Constitution. They seek that the President's failure or refusal be reviewed and set aside, and that he be directed to promulgate the establishment of a commission of inquiry within 30 calendar days of the order. One of the questions that they request the commission to investigate is whether there were efforts to influence or pressure members of the National Prosecuting Authority and/or the South African Police Service to stop investigating and/or prosecuting TRC cases, why this was done, and by who. The commission would then make recommendations, including directing that prosecutions be instituted against persons found to have acted unlawfully.

12. I noted above that I was South Africa's President from 1999 to 2008, and that Ms Mabandla was the Minister of Justice from 2004 to 2008. The work of the TRC was started in 1996, when former President Nelson Mandela

was the South African President. The TRC released the first five volumes of its final report on 29 October 1998, and the remaining two volumes were released during my term as President – on 21 March 2003.

13. Although styled in the notice of motion as unlawful conduct by the government respondents, the *Calata* applicants' claimed relief is underpinned by allegations of unconstitutional, unlawful and criminal conduct by me and Ms Mabandla during our tenure. I set out the allegations that relate to our alleged unlawful conduct below.

14. Given the nature of the direct allegations made against Ms Mabandla and I, which underpin the relief that the *Calata* applicants seek, as well as the orders that they seek, Ms Mabandla and I seek leave to intervene as 7th and 8th respondents. We have standing under section 38(a), (c) and (d) of the Constitution and under the common law to intervene as 7th and 8th respondents. We also have a direct and substantial interest in the subject matter of the application. Our legal rights will be adversely affected by the judgment and order of the Court. I am advised that whether we have such legal rights needs to be determined on a case and context-specific basis. I shall demonstrate below that when assessed on a case and context-specific basis, the intervention application ought to be granted.

15. In respect of section 38(c) of the Constitution, Ms Mabandla and I also act as members of and in the interest of the administration of which I was President. Some of the members of that administration are mentioned by name whilst others are not. It is also in the public interest as envisaged in section 38(d) of the Constitution that the full facts are placed before the

Court to determine this important matter of huge public importance that the *Calata* applicants have brought to this Court.

16. In summary, the direct and substantial interest that Ms Mabandla and I assert arise in the following circumstances:

16.1 First, the serious allegations of unconstitutional, unlawful and criminal conduct against Ms Mabandla and I, as well as members of the administration of which I was President, are issues between the parties in the litigation. The Court must determine the issues in order to grant the *Calata* applicants the relief that they seek. Those allegations are highly defamatory and damaging of our dignity and reputation. Our character is beyond all price. In such circumstances, Ms Mabandla and I are entitled to intervene to dispute the serious and damaging allegations made and to place direct evidence before this Court for it to determine the correctness or otherwise of the serious and damaging allegations against us on which the applicants rely for their relief.

16.2 Second, Ms Mabandla and I dispute that we or the administration of which I was President interfered with the NPA's prosecution of TRC cases and committed unconstitutional, unlawful and criminal acts as the *Calata* applicants allege. We intend to place relevant direct evidence before this Court to oppose the allegations on which the *Calata* applicants seek relief and to have legal submissions made on our behalf in that regard. Denying us intervention in such circumstances would conflict with, and unjustifiably deny us, our right under section 34 of the Constitution to have this dispute resolved by the application of law decided in a fair public hearing before

this Court. Once we are denied the right to intervene as respondents and defend ourselves against the serious and damaging allegations, we would not be able in future to relitigate the findings of this Court against us. It is unlikely that a court of appeal would allow us the right to intervene to challenge any adverse findings by this Court if we are denied the opportunity to defend ourselves as respondents before this Court. I am advised that there is authority in the highest court in the land that a witness who was not party to proceedings may not seek to intervene on appeal to challenge adverse findings against him or her where he or she does not challenge the order that the court of first instance has granted.

16.3 Third, given the allegations of intentional interference with the NPA and the prosecution of TRC cases for alleged personal interests or private organisational interests, the government, represented by the first, second, third and fifth respondents, may contend that this Court must find that if there was unconstitutional, unlawful or criminal conduct by Ms Mabandla and I, and the administration of which I was President, it is conduct that is contrary to the public interest because the government and the public have an interest in protecting the rule of law and ensuring good governance. If the Court were to make a finding along these lines, Ms Mabandla and I may be exposed to potential personal liability by those that claim to have been victims of such unconstitutional, unlawful conduct and criminal conduct or whose claims derive from the rights of such victims. In other words, we may be exposed to loss of indemnity from liability as former government functionaries. Such a risk has far-reaching implications for our legal rights and financial interests.

16.4 Fourth, it is clear from a reading of prayer 6 of the notice of motion and the founding affidavit that the commission of inquiry to be established must investigate Ms Mabandla's and my conduct, including that of the administration of which I was President. We clearly have a direct and substantial interest in the outcome of the application in relation to this prayer as well.

17. Finally, the allegations made against Ms Mabandla and I, if upheld albeit false, will unjustifiably breach our right to human dignity in section 10 of the Constitution. To the extent that the common law does not accord us the right to intervene in the circumstances of the present case, the common law rules on intervention must be developed in terms of section 39(2) of the Constitution to recognise the right for a party to intervene as a respondent in circumstances similar to the present case. Those circumstances are where the present administration is challenged for breaches of the Constitution relying directly and only on alleged conduct of the former administration, where named members of the former administration are expressly and directly alleged to have acted in an unconstitutional, unlawful and criminal manner. This Court would fail to promote the spirit, purport and objects of the Bill of Rights if it does not develop the common law to recognise our right to intervene in such circumstances.

ALLEGATIONS UNDERPINNING RELIEF SOUGHT IN MAIN APPLICATION

General allegations

18. It is true that accountable governance and social trust in such governance depend on public officials making decisions that are both reasonable and responsive.

19. In the main application, the *Calata* applicants allege, however, that this principle was violated due to political interference in the prosecution of the TRC cases. Their central allegation is that there was a deliberate political decision, especially during my tenure as the President, not to prosecute individuals who committed apartheid-era crimes, and who were not granted amnesty by the TRC. According to the applicants, this decision deprived them of substantive rights and entitlements under the Constitution.

20. The *Calata* applicants allege that with the exception of the Mandela administration, the post-apartheid state deliberately delayed the investigation of the TRC cases and prosecution of perpetrators. This delay, according to the *Calata* applicants, suggests political compromise or a deliberate tolerance of these crimes for *ulterior* motives.

21. From the perspective of the *Calata* applicants, this constituted a violation of the rule of law, which was further aggravated by the government's refusal or failure to thoroughly investigate the suppression of the TRC cases through a credible, independent, and transparent inquiry.

22. The *Calata* applicants directly allege that over the years, the Executive (at its highest level), the NPA, the South Africa Police Service ("**SAPS**") and other state organs colluded, or acquiesced in the suppression of the TRC cases. Despite various requests (so the allegation goes), the SAPS and the

NPA did not investigation the TRC cases. In doing this, they sometimes acted on instruction from the highest level of the Executive – the President. The *Calata* applicants allege that this conduct was in bad faith and for unlawful political reasons.

23. The *Calata* applicants allege further that the suppression of the TRC cases by the state's machinery is contrary to the rule of law, which underpins South Africa's constitutional order. It is also a breach of South Africa's international law obligations, which are contemplated in sections 231 to 233 of the Constitution, read with section 39(b) of the Constitution. The suppression is lastly (according to the *Calata* applicants) a violation of rights in the Bill of Rights.

24. The *Calata* applicants also allege in their founding papers that Ms Mabandla and I violated rights [556][1], breached the rule of law [562]; and committed serious crimes [559].

25. They further allege that my administration was responsible for the brazen suppression of the TRC cases [405] – at my direction, and further that this violated multiple constitutional and statutory provisions [529 and 530], including section 32(1)(a) and (b) of the National Prosecuting Authority Act 32 of 1998 [529.5 and 530.2].

Specific allegations made against me or relating to me and the Presidency

[1] All references in brackets are to paragraphs in the founding affidavit.

TM. 13. N

26. In what follows, I set out the allegations that the *Calata* applicants make against me and/or that relate to me and the Presidency/administration in their founding papers in the main application.

27. These allegations are relied on by the Calata applicants to demonstrate conduct (both direct and seemingly implied) on my part in suppressing unlawfully the TRC cases for political motivations. This nefarious and unconstitutional conduct is said to have commenced in 1998 when I was a Deputy President, until 2008 when I resigned from office.

28. In making these allegations, the Calata applicants rely primarily on affidavits and documents that were used in different forums, including Courts, over the years. They also rely on books authored and interviews by authors who have written on the TRC cases. Reliance is also placed on alleged oral accounts of incidents relayed by various persons.

Alleged conduct 1: the "deliberations" and attempts to amend TRC legislation

28.1 The starting point is 1998, when I was the Deputy President.

28.2 The *Calata* applicants allege that in 1998, secret consultations began between the government and a group of high-ranking former generals of the SANDF and the security police. These "deliberations" were held to discuss questions of criminal liability arising from the past. The discussions were allegedly mediated by Mr Jürgen Kögl, who had close ties to key ANC members. In addition to former President Jacob Zuma, high-ranking ANC officials, including Mr Penuell Maduna (then Justice Minister), Mr Mathews

Phosa, Dr Sidney Mufamadi, and Mr Charles Nqakula, participated at various times.

28.2.1 I must say immediately that the discussions which included Mr Jürgen Kögl and various Afrikaners had absolutely nothing to do with "questions of criminal liability arising from the past". They were solely and exclusively about the various demands made by some Afrikaners about such matters as a 'volkstaaat' and 'the right to self-determination'.

28.3 I am alleged to have been involved in these "deliberations", initially as Deputy President and later as President. [381.3] and that I frequently consulted with Former President De Klerk or other senior government officials. [379.1].

28.4 The "deliberations" were apparently aimed at finding mutual arrangements to avoid post TRC trials through a new indemnity mechanism. The allegation seems to be that the need for mutual agreement stemmed from the fact that in March 1999, the TRC had denied amnesty to 37 ANC leaders, among them myself, because we did not disclose any individual offences. [377 – 377.1].

28.5 The Calata applicants allege that during July 1998 the former SANDF Generals called for a blanket amnesty *for all sides*.

28.6 Soon thereafter, I informed Parliament that the government was reviewing additional amnesty proposals submitted by the SADF generals. [377.2].

28.7 According to the former police commissioner and head of the Foundation for Equality Before the Law (FEL), Mr Johan van der Merwe, the FEL proposed an indemnity procedure based on admission of the crime committed without the need to make full disclosure. [379-381, 386]

28.8 I am alleged to also have attempted to amend TRC legislation to allow amnesty for collective responsibility without requiring individual disclosure. This, apparently, was because ANC spokesperson indicated that the Generals had expressed willingness to disclose information but only if guaranteed amnesty. [377.3].

28.9 By late 2002, when I was the President, the proposal and draft legislation had been finalised and was presented to Parliament for enactment. However, I rejected the legislation when it was presented to me for approval.

28.10 Before I rejected the amnesty legislation, the Generals were reportedly close to securing a resolution. The *Calata* applicants also allege that one Marais informed one Schmidt that after seven years of negotiations, the Generals and the government's security cluster had agreed on a legal framework for post-TRC amnesty, with the government commissioning a "*law writer in Cape Town*" to draft the legislation. [391].

Alleged conduct 2: presentation of the final TRC report and implementation

28.11 The next pivotal point of alleged conduct relates to my presentation of the final TRC report on 15 April 2003 and the implementation thereof.

28.12 I addressed the National Houses of Parliament and the Nation on 15 April 2003, during the presentation of the final volume of the TRC Report. [124].

28.13 In my address, I apparently outlined formal strategies for pollical interference with the TRC cases. [126].

28.14 While I appeared to reject another amnesty due to its constitutional implications, I nonetheless emphasised the need to accommodate the many perpetrators who had not participated in the TRC process. [126.1].

28.15 I stated that while the NPA would be allowed to continue its work, it would be required to collaborate with intelligence agencies to enable those still willing to disclose the truth to enter into arrangements that are standard in the normal execution of justice. [126.2].

28.16 I also reaffirmed that individuals seeking justice or raising human rights violation grievances could still approach the courts and noted that relevant government departments were assessing the practical implementation of this approach and whether new legislation was necessary. [126.3].

28.17 I signalled that the TRC cases would not follow the usual prosecutorial approach. Unlike other serious crimes, such as murder, the TRC cases would be treated differently, with perpetrators offered leniency or alternatives to prosecution. Families of victims could participate in these legal arrangements and, if dissatisfied, could still pursue private prosecutions or civil litigation. [127].

28.18 I allegedly also articulated a government policy that effectively deprioritised the prosecution of TRC cases, instead implementing special arrangements, and that my alleged reference to intelligence agencies foreshadowed their eventual influence over prosecutorial decisions. [128].

28.19 According to the *Calata* applicants, the abovementioned strategies were developed and shaped during the earlier mentioned "deliberations" that took place between me and/or government representatives and former President F.W De Klerk and/or his representatives to find a solution to avoid the prosecution of former members of the SAP who had not received amnesty. [397].

28.20 The Calata applicants contend that following my speech, those in power moved swiftly to shut down TRC-related cases. [129].

28.21 They allege that the state entities authorised to conduct investigations, namely the SAPS and the NPA, both refused to work on TRC cases *unless I approved this*. [137- 140].

28.22 The NPA (NDPP Ngcuka at the time) never contacted me for a decision regarding the investigation and prosecution of TRC-related cases probably because this was seen as a futile exercise.[141].

28.23 The Calata applicants allege that on 23 February 2004, a Director-General's Forum chaired by Adv Pikoli (who was the Director-General of the Department of Justice at the time) met to consider how to give effect to the objectives in my April 2003 speech. Effectively, the meeting discussed how to deal with TRC-related cases.

28.24 The Forum appointed an Amnesty Task Team to inter alia consider and report to the Forum on a criterion that the NPA would apply in deciding TRC prosecutions and formulate guidelines for prosecutions. [148-150]. The Amnesty Task Team recommended the establishment of a Departmental Task Team comprised of representatives from the Department of Justice, Intelligence Agencies, South African National Defence Force, South African Police Service, Correctional Services, NPA and the Office of the President. The Departmental Task Team would, amongst other things, consider the advisability of the institution of proceedings committed during conflicts of the past *before* the institution of criminal proceedings. [155-156].

28.25 It is alleged that the government accepted and implemented much of the Amnesty Task Team's recommendations, and this is allegedly evident from the 2005 amendments to the Prosecution Policy and my introduction of a Special Dispensation for Political Pardons in 2007. [160].

28.26 The Calata applicants contend that as a result of the mooted strategies in my April 2003 speech, a moratorium of three years (2003 to 2005) was placed on the pursuit of TRC cases while the Amnesty Task Team worked on the drafting Prosecuting Policy for TRC cases. [179].

Alleged conduct 3: interference with prosecution in Chikane matter

28.27 Mr Ackermann of the NPA had been appointed as the head of the Priority Crimes Litigation Unit (PCLU) which was the unit that was created within

the NPA by Presidential Proclamation in March 2003 to deal with TRC cases. [106].

28.28 The TRC cases were declared priority crimes in terms of the PCLU proclamation by NDPP Ngcuka in May 2003 [107].

28.29 The Calata applicants allege that in defiance of the abovementioned moratorium, Mr Ackermann pursued cases in 2004 including one involving the poisoning of Reverand Frank Chikane in which Dr Wouter Basson was implicated together with three former policemen. Dr Basson is known to have been the former head of the apartheid government's chemical and biological warfare project. This was considered a priority case by the PCLU. [209]

28.30 Apparently on the morning of the police's intended arrest of Dr Basson and the co-accused, in November 2004, Mr Ackermann received telephone calls from their attorney, Mr Wagener and an official of the Department of Justice. The latter requested that Mr Ackermann suspend the arrests and halt work on all TRC cases pending the development of the prosecution guidelines. [182.1-4]

28.31 The Calata applicants contend that, according to Mr Wagener I authorised the suspension of these arrests "*in an extraordinarily swift move*". [183].

The implementation of the Prosecution Policy and prosecution in the Chikane matter

TM. S. 20/4

28.32 In December 2005, the Prosecution Policy became effective. According to the Calata applicants, the amendments to the Policy were introduced in view of the essential features of my April 2003 speech on the TRC final report. [194].

28.33 The Calata applicants allege that while the amendments to the Policy professed to pursue various noble objectives including not perpetuating TRC amnesty, the maintenance of impunity was intended. The Policy set out procedural arrangements for those wanting to make representations to the NDPP in respect of their crimes arising from conflict committed before 11 May 1994. [195-196]. Moreover, it provided the criteria for determining whether to prosecute. These and other features, the Calata applicants contend, amounted to a rerun of the TRC's amnesty criteria and guaranteed the perpetuation of impunity. [198-199].

28.34 Once the guidelines were issued, the NPA proceeded with the TRC cases and Adv Pikoli invited representations from the people implicated in the Chikane attempted murder case. Adv Pikoli concluded to prosecute the accused and informed them of this in July 2006. [210, 219]

28.35 The Calata applicants allege that the Chikane prosecution prompted improper intervention by several Ministers. They contend that in 2006, Adv Pikoli was summoned to a meeting that was attended by several Ministers, including Minister Zola Skweyiya (then Minister of Social Development), Minister Mosiuoa Lekota (Minister of Defense), Acting Minister Thoko Didiza (representing the Minister of Justice – Minister Brigitte Mabandla) and Mr Jafta, the Chief Director in the Presidency. The meeting was

allegedly called by Acting Minister Didiza to address the prosecution in the Chikane matter. [244].

28.36 At this meeting, it apparently became clear to Adv Pikoli that there was a fear that cases like the Chikane matter could open the door to prosecution of ANC members. The Ministers apparently expressed concern at Mr Ackermann's involvement and sought clarity about whether he would be able to decide to undertake a prosecution of the ANC members without Adv Pikoli's approval. Adv Pikoli assured them that the decision to prosecute laid only with him. [225].

28.37 The Calata applicants allege that this meeting probably pointed to the overriding concern of government that pursuing a TRC case, like the Chikane matter, would put pressure on the NPA to pursue cases against the ANC members. [226].

28.38 In 2006, Adv Pikoli was again summoned to a meeting which took place at the office of the Presidency. At this meeting, Adv Pikoli proposed that Dr Ramaite, the Deputy National Director of Prosecutions, should chair the Task Team given the adverse views against Mr Ackermann. This proposal was accepted. A further meeting was held with Ministers in the Security Cluster, attended by the Minister of Safety and Security, the Minister of Social Development, Acting Minister of Justice, various DGs and Mr Jafta. The proposal to establish a working group was accepted and Adv Pikoli wrote to the various DGs, including Commissioner Selebi – inviting them to nominate a senior official to serve on the task team. [227-228].

28.39 The task team met for the first time on 12 October 2006 and was attended by Adv Pikoli together with the various officials. However, Adv Pikoli did not participate further in the activities of the task team. According to Mr Macadam, the NPA representative on the task team, the task team comprised primarily of members of the intelligence community who were intent on cross examining him as to why mattes should be investigated rather than addressing the issue of outstanding cases. [229]

28.40 The Calata applicants note that the involvement in the task team of Mr Jafta, the Chief Director in the Presidency who had an intelligence background should not have been allowed because the policy guidelines did not make provision for a member of the Presidency to be part of the group assessing TRC cases. They allege that this involvement indicated that the Presidency intended to have direct involvement in the decisions relating to the TRC cases. [230].

28.41 Adv Pikoli received further representations from the suspects in the Chikane matter claiming that they had received indemnity against prosecution but after seeking independent advice Adv Pikoli was advised that the indemnities did not bar prosecution. In the meantime, however, the SAPS representative in the task team advised the NPA that National Commissioner Selebi did not believe Reverend Chikane was interested in prosecution and that the NPA needed to consult with Reverend Chikane about the proposed prosecution. Adv Pikoli thus instructed Mr Ackermann to confirm his position. However, on the same day, the head of the SAPS Legal Support sent a letter to the PCLU expressing the National

Commissioner's view that before any prosecutorial decision could be taken, the task team had to submit a final recommendation to the Committee of Directors General in respect of each case – which in turn must advise the NDPP who to prosecute or not. [233-234].

28.42 According to the Calata applicants, at the end of 2006, and after the abovementioned interactions, Adv Pikoli realised his counterparts in the other departments in the task team viewed their role as clamping down on the TRC cases from proceeding and to made clear to him that he could not proceed to prosecute without their permission. [236].

28.43 The Calata applicants contend that the central concern of government leadership was that the pursuit of the TRC cases could lead to cases against ANC members, and for this reason all cases had to be stopped even if it meant denying justice to families in the TRC cases. [237].

28.44 As a result of the differences within the task team, in early January 2007 Adv Pikoli advised Commissioner Selebi and the Directors General that he would approach the Minister of Justice to get guidance on the serious misunderstandings about the role of the task team which compromised the functioning of the team. [238].

28.45 During this same period, on 5 January 2007, Minister Mabandla issued a press statement expressing the need to develop a policy on presidential pardons for prisoners who alleged that their offences were politically motivated. She explained that the matter was complex, novel and required a "political solution". The Minister noted that the pardons were necessary

to address situations where applicants had not applied for amnesty from the TRC because their political parties did not support the TRC; applicants had pleaded ignorance of the TRC processes; or crimes committed by applicants after the cut-off date for TRC amnesty. [239].

28.46 Also around this period, the former Minister of Police, Adriaan Vlok and the former Commissioner of Police, General van der Merwe made representations to Adv Pikoli admitting to authorizing the murder of Reverend Chikane and requested not to be prosecuted in light of the disclosure. They however refused to make full disclosure. Adv Pikoli thus declined to grant them immunity from prosecution – in terms of the prosecution guidelines. Their prosecution thus commenced. [241].

28.47 Adv Pikoli then met with then Minister Mabandla. The interaction between them is addressed later in this affidavit.

28.48 Adv Pikoli and Mr Ackermann appeared before the Justice Portfolio on 3 May 2007. According to the Calata applicants, the minutes of this meeting reflect Adv Pikoli's frankness about what was stopping prosecutions of the TRC cases. In terms of the minutes, Adv Pikoli highlighted that whenever there was an attempt to charge members of former police services, there was political intervention. While on the other hand, families of victims were pressing for prosecution. The Calata applicants contend that the statements by Adv Pikoli demonstrates his frustration that former generals seemed able to exert influence and were able to engineer political intervention when their people were pursued. They also allege that failure by the justice Portfolio Committee and across the political spectrum to call

for an independent inquiry into the alleged violation of the rule of law at that stage is shameful.[251].

28.49 The Prosecution Policy was challenged in the High Court by family victims in July 2007 and it was argued that the policy was designed for the sole purpose of guaranteeing impunity for apartheid-era perpetrators. The application was opposed by the Minister of justice and the NDPP. [252].

28.50 Also in July 2007, a plea and sentence agreement was reached with the accused in the Chikane attempted murder matter. Adv Pikoli sent a memorandum to the Justice Minister informing her that the case had been set down for hearing on 17 August 2007, for confirmation of the plea and sentencing agreement. This occurred on 17 August 2007 and after pleading guilty, the accused were convicted and suspended sentences were imposed. [253-255].

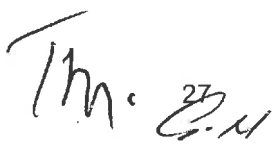
28.51 The Calata applicants allege that the prevailing view by Adv Pikoli and Mr Ackermann was that the NPA would have preferred a full prosecution as this would have produced greater truth and accountability. But Adv Pikoli's concern at the time was that the "political headwinds" were too strong and he feared that police investigations into the matter would have compromised the case. It was clear to Adv Pikoli, so the allegation goes, that the government – especially the then Minister of Justice (Ms Mabandla) – did not want the NPA to prosecute the accused in the Chikane case. [258.]

Alleged conduct 4: suspension of Adv Pikoli

28.52 After the convictions in the Chikane matter, a newspaper article was published on 19 August 2007 in which it was claimed that the NPA was preparing to prosecute ANC leaders. The article was based on a memorandum drafted by Mr Ackermann four years prior, however, the note was forged to suggest that it was recently made. The NPA released a press statement on 21 August 2007 and denied the allegations in the article. [260].

28.53 According to the Calata applicants, several interventions followed the release of this article which point to the extent of political interference. First, Adv Pikoli was asked to relieve Mr Ackermann from the TRC cases by the DG, Department of Justice. He declined to do so. Second. Adv Pikoli was summoned to a meeting of the subcommittee of the Justice, Crime Prevention and Security Cabinet Committee on Post TRC matters on 23 August 2007. Cabinet Ministers in attendance included the Minister of National Intelligence Services, Minister Ronnie Kasrils, Minister Mabandla and Minister Skweyiya. [262-263]. According to Adv Pikoli, those in attendance at the meeting demanded answers from him about the TRC prosecutions. [264].

28.54 It is alleged that Minister Mabandla and Adv Pikoli interacted during the meeting and thereafter. I address that interaction later in this affidavit. I mention, however that during their interaction, Adv Pikoli confirmed that the NPA was not investigating "the 37 ANC leaders including the President". [267.]



28.55 I suspended Adv Pikoli from office on 23 September 2007 and announced the establishment of the Ginwala Enquiry into his fitness to hold office. [276]. One of government's complaints against Adv Pikoli was his handling of the TRC cases in that he did not demonstrate an appreciation of the public interest issues that were mandated by the prosecution policy. [278].

28.56 The Calata applicants observe that Adv Pikoli attested that the decision to suspend him was influenced by his approach in the TRC cases. [272].

28.57 Mr Ackermann was allegedly then summoned by the acting NDPP, Adv Mpshe, and relieved of his duties in relation to the TRC cases. Mr Ackermann also attested that Adv Mpshe no doubt received a political instruction to remove him from the cases. [271].

28.58 The Calata applicants contend that the establishment of the Ginwala Enquiry and removal of Mr Ackermann marked the start of years of complete inactivity in the TRC cases [275]. SAPS declined to further investigate the TRC cases pending the finalization of the enquiry. [277].

Conduct 5: special process for handling pardons

28.59 At a joint Parliamentary session on 21 November 2007, I announced a special process for handling pardon requests from individuals convicted of politically motivated offenses, who had not been denied amnesty by the TRC. I am alleged to have framed this initiative as an effort to resolve the TRC's "unfinished business". [289 The window period for submitting requests was 15 January 2008 to 15 April 2008 and was subsequently extended to May 2008. [291-293].

28.60 The Calata applicants note that some of the applicants who were recommended for pardon to former President Motlanthe included the accused in the Chikane matter and AWB members. [296].

28.61 The pardon process was criticised by civil society organisations, for being opaque and excluding the victims. Ultimately, (in 2009) the pardons' process was interdicted by court and in 2010 the Constitutional Court later ruled that no pardon could be issued without first affording the victims a hearing. [300-301].

28.62 By this time, I had resigned as President.

The Calata applicants place me at the centre of political interference

29. It is apparent from the allegations against me in the founding affidavit (which are <u>not</u> exhaustively and comprehensively summarised here), that the *Calata* applicants' case for political interference in the investigation and prosecution of the TRC cases, or even their so called suppression, is based on my alleged conduct, and the conduct of various officials in my administration during my tenure as Deputy President and President (i.e from 1998 to 2008). The *Calata* applicants state in their papers that my administration played a central role in what they allege to have been a violation of the rule of law, human rights, as well as other provisions in the Constitution and criminal conduct. They allege that this unlawful conduct was perpetuated after I left office.

30. The *Calata* applicants squarely allege that while publicly rejecting a general amnesty, I endorsed special arrangements to accommodate

perpetrators who had not participated in the TRC process, or who were denied amnesty, in order to shield myself against prosecution.

31. They have placed me at the centre of the political interference and then allege that I deny such involvement. They allege further that my denial conflicts with the clear suppression of TRC cases that occurred under my administration. They assert that an independent commission of inquiry is required to "consider and test the veracity of the denials of former President Mbeki". [401–405].

32. This makes it that I am the principal target of the commission of inquiry that they seek.

The motivation for my alleged interference

32.1 The Calata applicants allege that the political interference stems from the ANC's failed attempts to obtain collective amnesty for apartheid era crimes.

32.2 The Calata applicants refer to a docket that allegedly implicates 37 ANC members, including me, apparently compiled by the FEL. This docket is said to contain sufficient evidence to support criminal charges against ANC officials, including charges of terrorism against me. The FEL, so the allegation goes, has refused to hand over the docket to the prosecuting authority and has claimed that it would only be used if apartheid era officials were targeted for prosecution. [397].

The allegations against Ms Mabandla

33. As against Ms Mabandla, the applicants allege that:

33.1 On 5 January 2007, she issued a press statement highlighting the need to develop a policy on presidential pardons for prisoners claiming their offenses were politically motivated. [239].

33.2 On 6 February 2007, she met with Adv Pikoli and appeared to have had the impression that he (Adv Pikoli) had previously agreed not to proceed with the TRC cases. [242].

33.3 She sent a letter to Adv Pikoli on 8 February 2007. The letter was titled "TRC MATTERS," and in it, she expressed surprise at media reports suggesting that the NPA intended to proceed with prosecutions. She is further alleged to have stated in the letter, that: "*I must advise you at the outset that the media articles alleging that the National Prosecuting Authority will go ahead with prosecutions have caught me by surprise. In our discussions, you briefly mentioned to me that the NPA will not go ahead with prosecutions*". [243].

33.3.1 The *Calata* applicants allege that in response, Adv Pikoli addressed a memorandum to Ms Mabandla, in which he "*set out the history behind the policy to the TRC cases and to inform the Minister of the problems experienced in implementing this policy*". [246].

33.3.2 It is further alleged that Ms Mabandla never responded to Adv Pikoli's memorandum, nor did she deny that her department was involved in improper interference with the NPA's work.

33.4 The *Calata* applicants allege further that in his affidavit in *Nkadimeng 2 (FA22)*, Adv Pikoli stated that he was shocked by the absence of an immediate response by Ms Mabandla to his memorandum, given the serious concerns he had raised and the fact that obstructing the prosecution authority's work is a criminal offense. To him (so the allegation goes), Ms Mabandla's silence indicated that she was content with the deadlock between the NPA, the Department of Justice, SAPS, and National Intelligence Agency ("**NIA**"), effectively allowing the suppression of TRC cases to continue [249].

33.5 It was clear that the government, especially the Minister of Justice, did not want the NPA to prosecute those implicated in the Rev Chikane case. [258].

33.6 After a newspaper article on the issue was published, Adv Pikoli was summoned to a meeting of the subcommittee of the Justice, Crime Prevention, and Security ("**JCPS**") Cabinet Committee on Post-TRC matters on 23 August 2007. The meeting was attended by several cabinet ministers, directors-general, and Adv Selebi. Among the ministers present were Ronnie Kasrils (Minister for National Intelligence Services), Ms Mabandla, and Minister Skweyiya. [262].

33.7 It is alleged that during the meeting, it was immediately demanded that Adv Pikoli provide answers about the TRC prosecutions – and to especially explain why the NPA was instituting investigations in relation to a forged memorandum. Ms Mabandla instructed Adv Pikoli to halt the investigation, to which Adv Pikoli responded that the NPA

was bound by law to continue with the prosecutions of individuals who did not apply for or were refused amnesty. [264].

33.8 Ms Mabandla sent a fax to Adv Pikoli on 28 August 2007, complaining that she had not been advised of the decision to investigate (*the 37 ANC leaders*), and wanted to know the basis thereof. [265].

33.9 Adv Pikoli apparently responded and confirmed that there was no investigations by the NPA "against the 37 ANC leaders including the President". [267]. He concluded the letter by requesting an urgent meeting with the Minister. [269].

33.10 According to the Calata applicants, Ms Mabandla did not respond to the meeting request. [270] Instead, Adv Pikoli was suspended and the Ginwala enquiry into his fitness was established.

34. It is clear that the allegations against Ms Mabandla suggest that as Minister of Justice, she sought to obstruct the investigation and prosecution of TRC cases.

REASONS FOR SEEKING TO INTERVENE

35. I repeat what I have stated above in summary regarding our direct and substantial interest in the subject matter of the main application. What I say below does not detract from what I have already said.

36. Ms Mabandla and I beg the court's leave to intervene in the main application:

36.1 to protect at the very least our respective right to dignity, which is protected by section 10 of the Constitution; and to have our dispute of the Calata applicants' serious and damaging allegations against us determined fairly in accordance with section 34 of the Constitution. This, we intend to do by challenging the tarnishing allegations against us, that underpin the *Calata* applicants' request for: (a) declarators of political interference in the investigation and prosecution of the TRC cases; and (b) constitutional damages.

36.2 Permitting us to place our versions before court would add to the body of evidence that would have to be evaluated and tested, in order for that court to determine the true factual position, apply the law to the correct facts, and thus issue the correct outcome in the circumstances, as well as appropriate relief, including that regarding the establishment of a commission of inquiry.

36.3 Absent our versions, the allegations in the founding affidavit would be taken as given – there would be no contrary version before court. There would also be no other opportunity to challenge the *Calata* applicants' versions, including by way of appeal.

SUMMARY OF FACTS TO BE PROVIDED

37. The allegations against us, and the TRC cases generally, in the founding affidavit are disjointed, lack context, are incomplete and materially false.

38. If permitted to intervene in the main application, we will address several topics including:

38.1 The reason behind the TRC, and its role in the transition to democratic rule in South Africa;

38.2 The events post the TRC;

38.3 The position of the "ANC 37" in the context of the TRC and their potential prosecution;

38.4 My, and Ms Mabandla's role/interactions (respectively) with the NPA regarding the TRC cases;

38.5 The Rev Chikane matter; and

38.6 The suspension of Adv Pikoli.

39. In what follows, I provide a broad overview of these topics but hope to have the opportunity to address the specific allegations of interference raised by the *Calata* applicants in due course and once we have been permitted to intervene. The allegations in the *Calata* application span a significant historical timeframe and will require time to deal with.

The TRC and transition to democracy

40. The TRC was established with the important aim to help ensure that the truth was told about human rights violations during the larger part of the apartheid years, with the violators being exposed and given the opportunity publicly to apologise. The process provided an opportunity to those who had committed crimes in the context of those violations of human rights to apply for amnesty, apologise to those they had harmed, and gave an opportunity to the latter to confront the wrong-doers. The TRC

retained the power to deny such amnesty and refer matters to the relevant authorities for prosecution; and order for reparations to be paid to those who had been victim to the crimes indicated above. In the context of the foregoing, the ANC in particular was accepted as a representative of those who had been oppressed and against whom various crimes had been committed.

41. The 1995 Promotion of National Unity and Reconciliation Act which created the TRC contains very important provisions which help to explain the importance of the TRC for the transition to democracy. Ultimately, the TRC had a critical place and was vitally important in the historic endeavour to build the new post-apartheid South Africa.

42. Some time while the TRC was continuing its work, a group of former senior officers of the SAP and the SADF, including Generals, requested a meeting with the ANC concerning matters relevant to the TRC. I, together with some other members of the ANC Committee tasked to deal with the TRC, met these former SAP and SADF Officers. They told the ANC delegation that their view with regard to how the previous (apartheid) government should approach the TRC was as follows, that:

42.1 the former National Executive (Cabinet) should approach the TRC to inform it of the decisions it had taken to advance its policies, as well as defend both the government and the apartheid system as a whole;

42.2 the Senior Officials serving this Cabinet, like the former SAP and SADF Generals, should then approach the TRC to explain what they

did to implement the policies handed down to them by this Cabinet, including the instructions they had given to the subordinate officials; and,

42.3 these Subordinate Officials should then also approach the TRC to explain what they did to implement the directives handed down to them by the Senior Officials/Generals.

43. The former Senior Officers/Generals informed the ANC delegation that the former Cabinet, led by Mr F.W. de Kerk, had refused to appear before the TRC as suggested above. This was the reason why they (the former Senior Officials/Generals) had not volunteered to appear before the TRC. They thought it was unfair to leave only the Subordinate Officials to appear before the TRC to explain their actions. Some of these actions would be violations of human rights, requiring amnesty, presented without the context which would have been provided by the submissions to the TRC of the former Cabinet members and Senior Officials/Generals.

44. On the back of this, the former Senior Officials/Generals requested that the ANC should approach Mr de Klerk and his former colleagues to appear before the TRC for the purpose indicated above.

45. In response to this request, the ANC decided that a collective of selected members of its leadership should approach the TRC to make a submission equivalent to the submission expected of the former Cabinet, formerly led by Mr de Klerk.

46. The ANC leadership then handpicked the members of its leadership who would be part of the collective to approach the TRC, taking into account persons who would have been in relevant leadership positions during the period in question.

47. This is the ANC 'Group of 37' which applied for amnesty on the basis that it had decided the policies which had been implemented by lower organs of the ANC.

48. The TRC first granted a general amnesty to the 'Group of 37'. However, a court overturned this TRC decision on the basis that the application of the 'Group of 37' did not meet the requirements of the TRC Act, which required that those who applied for amnesty should indicate in full the specific offenses for which they sought amnesty.

49. The members of the 'Group of 37', individually and collectively, were not practitioners at the implementation level equivalent to the Subordinate Officials mentioned earlier and therefore had committed no specific offences requiring amnesty in terms of the TRC Act.

50. The final TRC response put paid to the ANC's attempt to set an example for the former Cabinet, which, if we had succeeded in our application, would have given us the moral authority to approach the former Cabinet to follow our example.

51. This, in turn, would have opened the way for the former SAP and SADF Senior Officials/Generals to approach the TRC.

52. The ANC understood and accepted the rationale behind the ultimate rejection of the amnesty application of the 'Group of 37'. It saw no need to take the matter further, including the original intention to persuade.

53. However, in my speech on 15 April 2003, when I tabled the TRC Report before the Houses of Parliament, I said:

> *"Yet we also have to deal with the reality that many of the participants in the conflict of the past did not take part in the TRC process. Among these are individuals who were misled by their leadership to treat the process with disdain. Others themselves calculated that they would not be found out, either due to poor TRC investigations or what they believed and still believe is too complex a web of concealment for anyone to unravel. Yet other operatives expected the political leadership of the state institutions to which they belonged to provide the overall context against which they could present their cases: and this was not to be."*

54. In the same speech I quoted what the TRC had said about some who 'did not participate in the TRC'. In this regard, the TRC said:

> *"Others did not wish to be portrayed as a 'victim'. Indeed, many said expressly that they regarded themselves instead as soldiers who had voluntarily paid the price of their struggle...Many have expressed reservations about the very notion of a 'victim', a term which is felt to denote a certain passivity and helplessness...Military operatives of the liberation movements generally did not report violations they experienced to the Commission, although many who were arrested experienced severe torture. This is in all likelihood a result of their reluctance to be seen as 'victims', as opposed to combatants fighting for a moral cause for which they were prepared to suffer such violations. The same can be said for most prominent political activists and leadership figures...The Commission did not, for example, receive a single Human Rights Violation statement from any of the Rivonia trialists."*

55. We accepted these observations as correct.

Events post the TRC

56. The TRC referred to the NPA for further investigation and prosecution the cases of some of those to whom amnesty was denied. The Government accepted this TRC decision, which did not require any intervention on the part of the National Executive. Accordingly, the National Executive assumed that the NPA would act as requested by the TRC.

The NPA and the TRC cases

57. What I said in my speech on 15 April 2003 as I tabled the TRC Report before the Houses of Parliament reflects and represents exactly this philosophical outlook. In this context, I said, for instance:

> *"However, as part of this process and in the national interest, the National Directorate of Public Prosecutions, working with our intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation.*
>
> *"This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts.*
>
> *"It is critically important that, as a government, we should continue to establish the truth about networks that operated against the people. This is an obligation that attaches to the nation's security today; for, some of these networks still pose a real or latent danger against our democracy. In some instances, caches of arms have been retained which lend themselves to employment in criminal activity."*

58. In the discussion on the TRC to which I have referred, I mentioned that South Africa is currently confronted by the interventions of groups of South

Africans who are determined to subvert the process of the development of the South Africa visualised in our country's Constitution.

59. It would earn our country and people huge dividends if ways and means could be found, including *"(leaving the NPA) doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth",* which would end the destruction caused by a group I have characterised as counter-revolutionary.

60. None of what I said in 2003 related to the cases referred by the TRC to the NPA, which the latter was expected to investigate and prosecute. Indeed, during the 2003 speech I also referred to what might, in future, be cases similar to those handled by the TRC and said:

> *"Given that a significant number of people did not apply for amnesty, what approach does government place before the national legislature and the nation on this matter? Let us start off by reiterating that there shall be no general amnesty."*

The Rev Chikane matter

61. I deny that I interfered with any aspect concerning Rev Chikane's case. I will provide further particulars of what transpired – this requires a conversation with Rev Chikane, which I have not been able to have in the period of time I had to prepare this application.

The suspension of Adv Pikoli

62. Sometime before 2007, possibly in 2006, the NPA and the Directorate of Special Operations (DSO) or the 'Scorpions' started investigating then National Commissioner of Police, the late Jackie Selebi, for corruption.

63. During this investigation, the National Director of Public Prosecutions, Adv Pikoli, informed me that Mr Selebi and the Police Service as a whole were obstructing his work of investigating the National Commissioner. I must add that investigations regarding the National Commissioner had nothing to do with TRC cases.

64. He asked me to help him in this regard. I convened a meeting at the offices of Crime Intelligence to address the matter reported to him by the NDPP.

65. In addition, the meeting was attended by Adv Pikoli, National Commissioner Selebi, the heads of the DSO and Crime Intelligence, and Rev Frank Chikane, the DG in the Presidency.

66. I informed the meeting that everybody had a constitutional duty to help the NPA to carry out its work. Accordingly, National Commissioner Selebi and the SAPS had a duty to help the NDPP and the DSO to carry out their work.

67. I directed that the SAPS should therefore not obstruct the NPA in its work, including during its investigation of the National Commissioner. He also directed that if any problem arose in future between the SAPS and the NPA in the context of the investigation of the National Commissioner, those concerned should report this to DG Chikane, who would inform me.

68. During the meeting it was agreed that the DSO should have access to any relevant Crime Intelligence files. It would read these at the Crime Intelligence offices rather than take them away to study in its own offices.

69. After this meeting, nothing was ever reported to me that the SAPS were obstructing the work of the NPA.

70. The next time I had to deal with this matter was when Adv Pikoli informed me that he had a Warrant to search the SAPS Headquarters and National Commissioner Selebi's house.

71. I then asked Adv Pikoli to meet me at the Official President's residence in Tshwane, Mahlambandlopfu. I also invited DG Chikane to attend the meeting.

72. During the meeting, Adv Pikoli confirmed that he had applied for and obtained the said Search Warrant. He said that he had to execute it immediately or within a week.

73. I told the Adv Pikoli that (in my view), the SAPS would oppose any attempt to search its Headquarters. I also said that so bad were the relations between the SAPS and the NPA and DSO that members of the SAPS might even open fire against the NPA search team. I therefore asked Adv Pikoli to give me a fortnight within which I would engage the SAPS and take all necessary measures to ensure that the NPA and DSO carry out their searches without problems.

74. I also told Adv Pikoli that I was surprised that he had sought a Search Warrant, knowing very well that I was ready to intervene with the SAPS, as I had already done successfully, to help the NPA.

75. Adv Pikoli did not explain why he had opted to get a Search Warrant.

76. However, he turned down my suggestion to delay executing the Search Warrant, undertaking to engage the SAPS so that the NPA could search the SAPS Headquarters with no opposition after a fortnight.

77. He insisted that he had to execute the Search Warrant within the short period he had indicated.

78. However, he conceded that indeed there might be a shoot-out at the SAPS HQ, saying that he based himself on what had nearly happened when a DSO unit had tried to search then Deputy President Jacob Zuma's residence at Forest Town in Johannesburg.

79. During this meeting, I also expressed concern that the NPA had decided to grant immunity to the assassins of Brett Kebble as part of the process of prosecuting National Commissioner Selebi.

80. I was of the view that both the National Commissioner and the assassins should be charged for whatever offence they were responsible, without wilfully exempting people who had committed murder.

81. Adv Pikoli responded by saying that it was normal to us 'small fry' to 'catch bigger fish', which is what the NPA was doing by granting immunity to the assassins.

82. Otherwise no argument could persuade Adv Pikoli to move away from his determination to execute the Search Warrant as he had indicated.

83. I then told Adv that I could never allow the situation where organs of State engaged each other in a shoot-out.

84. I said that to stop the NDPP from engaging in the reckless action of marching into the SAPS HQ because he was so authorised by a Search Warrant, and given that I had no power to instruct the NDPP about what he should do, my only recourse was to suspend the NDPP with immediate effect. I then went to my office in the residence, typed the suspension letter, and handed it to Adv Pikoli. After reading the letter, Adv Pikoli said that what I had done had 'lifted a lot of weight from his shoulders'.

85. I then appointed Adv Mokotedi Mpshe to the post of Acting NDPP. The Acting NDPP followed up the investigation of National Commissioner Selebi. When he was ready to arrest the National Commissioner, he informed me.

86. I engaged the SAPS as I had suggested to Adv Pikoli, again urging the National Commissioner to cooperate with the NPA.

87. I also dealt with the consequences of the impending arrest of the National Commissioner, including the appointment of an Acting National Commissioner.

88. National Commissioner Selebi surrendered himself to the relevant authorities when he was so requested by Acting NDPP Mpshe.

89. Contrary to what some have falsely suggested, this example shows two things. These are that:

89.1 even I had no power to instruct the NDPP about what he should do; and,

89.2 in a case which involved a very senior member of the police, I, on behalf of the National Executive, intervened practically to help the NPA carry out its constitutional and statutory tasks in a safer manner. I did not intervene to stop the NPA from carrying out its tasks.

90. I find it very strange indeed that the same President is accused of having suddenly developed the capacity to stop the NPA from carrying out its duties, acting to protect people who had been part of the apartheid machinery from prosecution for their crimes committed in defence of the apartheid crime against humanity.

91. The above demonstrates that the suspension of Adv Pikoli had nothing to do with the TRC cases.

The TRC cases post Adv Pikoli

92. The position of the National Executive with regard to the cases referred by the TRC to the NPA remained the same both while Adv Pikoli was NDPP and afterwards.

93. I addressed a Joint Sitting of the Houses of Parliament on 21 November 2007, to present a proposal about Presidential Pardons. Of course, the Constitution grants the President the power to grant pardons.

94. In this regard, the situation was that as I addressed Parliament, the Government was in possession of at least 1062 applications for presidential pardons by people who had been found guilty of offences which were allegedly committed with a political motive, arising from the conflicts of the past.

95. Further, there were ongoing political conflicts in the country which would undoubtedly increase the numbers of those who would request presidential pardons on the basis that the offences for which they were convicted were committed with a political motive, in conflicts which were a legacy of the apartheid years.

96. Necessarily, the President could not ignore these requests but was obliged to apply his mind to each one of them.

97. However, I was very mindful that we should do everything possible to respect the TRC. Accordingly, I said:

> *"In dealing with the challenges I have outlined, we have had to proceed with care, sensitive to the legacy of the TRC…It is important that our actions do not, in any way, undermine or suggest that any attempt is being made to undermine the TRC process and its outcomes…*

"In order to ensure that we do not undermine the work of the TRC, applicants who had applied to the Amnesty Committee established under the TRC Act and whose application for amnesty was refused, will not be considered for this Presidential pardon process."

98. I requested to address a sitting of both Houses of Parliament to make proposals about the exercise of the presidential pardon which would require 'care and sensitivity to the legacy of the TRC'.

99. Specifically, I proposed that the parties represented in Parliament should each appoint a representative who would serve on a Reference Group on Presidential Pardons and which would advise the President on each of the requests for pardon for politically related offences which the President would refer to the Group.

100. I believed that this would help to address the required sensitivity to the legacy of the TRC, while still respecting the Constitutional provision enabling the President to grant pardons.

101. I promised Parliament that the Presidency and the Department of Justice and Constitutional Development would later present documents to the Reference Group detailing its support mechanisms and related questions.

102. Naturally I would study and correct such documents once the Government officials forwarded their drafts to me.

CONCLUSION

103. For all the reasons submitted above, it would be in the interests of justice to grant the intervention application as per the notice of motion.

104. It is contrary to South Africa's constitutional order for the court to decide issues raised in the *Calata* application, without affording Ms Mabandla and I the opportunity to be heard. An adverse finding without hearing us would offend against our right to equality (in section 9 of the Constitution), human dignity (in section 10 of the Constitution) and access to court (in section 34). If the common law does not recognise our right to intervene in the present circumstances, it should be developed to recognise such right.

105. Once intervention is granted, Ms Mabandla and I request the Court to afford us a fair opportunity to file an answering affidavit in which we will address all the relevant allegations in the founding affidavit. Given the extensive historical nature of the allegations of fact made, and the extensive annexures on which the applicants rely, it will take significant time to put together a proper answer to the allegations. This could not be done in the time afforded us to bring this application. There are also other relevant and historical material that may have to be obtained, in some cases from archives, to respond properly to the allegations made. Various persons will need to be consulted also to put together a proper answer to the allegations.

WHEREFORE, the applicants pray for an order as set out in the notice of motion.

THABO MVUYELWA MBEKI

I certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and deposed before me at JOHANNESBURG on this the 31 day of March 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**

CAPACITY: **Practising Attorney**
Commissioner of Oaths

ADDRESS: **1st floor 357 Rivonia Boulevard**
Rivonia
Sandton, 2128
Tel: 011 238 7991

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 5245/25

In the matter between:

THABO MVUYELWA MBEKI	1st Applicant
BRIGITTE SYLVIA MABANDLA	2nd Applicant
And	
LUKHANYO BRUCE MATTHEWS CALATA	1st Respondent
ALEGRIA KUTSAKA NYOKA	2nd Respondent
BONAKELE JACOBS	3rd Respondent
FATIEMA HARON MASOET	4th Respondent
TRYPHINA NOMANDLOVU MOKGATLE	5th Respondent
KARL ANDREW WEBER	6th Respondent
KIM TURNER	7th Respondent
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PHUMEZA MANDISA HASHE	20th Respondent
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MOGAPI SOLOMON TLHAPI	22nd Respondent
FOUNDATION FOR HUMAN RIGHTS	23rd Respondent
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	24th Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	25th Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	26th Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	27th Respondent
MINISTER OF POLICE	28th Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	29th Respondent

In re:

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ALEGRIA KUTSAKA NYOKA	2nd Applicant
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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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CONFIRMATORY AFFIDAVIT

I, the undersigned,

BRIGITTE SYLVIA MABANDLA

do hereby make oath and say:

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1. I am an adult female and a former Minister of Justice and Constitutional Development 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 am the second applicant.

4. I have read the founding affidavit deposed to by former President, **Thabo Mvuyelwa Mbeki** and confirm that the averments therein, in as far as they relate to me.

BRIGITTE SYLVIA MABANDLA

I certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and deposed before me at JOHANNESBURG on this the 31 day of March 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

Goodman Ntandazo Vimba
Practising Attorney
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1st floor 357 Rivonia Boulevard
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CAPACITY:

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CONFIRMATORY AFFIDAVIT

I, the undersigned,

BRIGITTE SYLVIA MABANDLA

do hereby make oath and say:

TM. [illegible]

1. I am an adult female and a former Minister of Justice and Constitutional Development 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 am the second applicant.

4. I have read the founding affidavit deposed to by former President, **Thabo Mvuyelwa Mbeki** and confirm that the averments therein, in as far as they relate to me.

BRIGITTE SYLVIA MABANDLA

I certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and deposed before me at JOHANNESBURG on this the 25 day of June 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

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GAUTENG DIVISION, PRETORIA

CASE NO: 5245/2025

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BRIGITTE SYLVIA MABANDLA	2nd Applicant

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1ST TO 23RD RESPONDENTS' ANSWERING AFFIDAVIT

(APPLICATION FOR LEAVE TO INTERVENE)

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 Director of News at eNCA 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

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their bodies burned by the Security Branch of the erstwhile South African Police.

3. I deposed to the founding affidavit in the main application. I am authorised to depose to this answering affidavit on behalf of the 1st to 23rd respondents in this present application.

4. The facts deposed to in this affidavit fall within my personal knowledge or are contained in documents and records to which I have access, save where the contrary is expressly stated or appears from the context. The facts set out herein are to the best of my knowledge both true and correct.

5. Where I make legal submissions, I do so on the advice of my legal representatives, which I believe to be correct.

6. I have read the founding affidavit deposed to by the first applicant, **THABO MVUYELWA MBEKI** ("**Mr Mbeki**"), also made on behalf of the second applicant, **BRIGITTE SYLVIA MABANDLA** ("**Ms Mabandla**") in the application to intervene ("**the intervening applicants**") and I respond to it in this affidavit.

7. Allegations made by the intervening applicants that are not specifically traversed in this answering affidavit and which conflict with what is stated herein, are denied. Accordingly, I deny that the averments contained in Mr Mbeki's founding affidavit and Ms Mabandla's confirmatory affidavit are all true and correct.

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8. For ease of reference, I use the same terminology and defined terms that have been used by the parties so far in these proceedings, unless I indicate otherwise.

OVERVIEW

9. The intervening applicants bring this application to intervene and be joined as the seventh and eighth respondents in the underlying application under the above case number ("**the main application**").

10. The relief sought by 1st to 23rd respondents ("**the Calata applicants**") in the main application is set out in the Notice of Motion attached to that application. The relief is directed at the state respondents. The intervening applicants have not been cited as respondents in the main application and no relief is sought against them.

11. The intervening applicants do not state that they oppose any of the relief claimed in the main application. Nevertheless, they contend that they want to be admitted as parties in the main application because they "*intend to place relevant direct evidence before this Court to oppose the **allegations** on which the Calata applicants seek relief*" (emphasis added).

12. In this regard, the intervening applicants claim that the Calata applicants have made:

> "*serious allegations of unconstitutional, unlawful and criminal conduct against [them], as well as members of the administration of which [Mr Mbeki] was President, are issues between the parties in the litigation. The Court must determine the issues in order to grant the Calata applicants the relief that they seek. Those allegations are highly defamatory and damaging of [the intervening applicants'] dignity and reputation. [The intervening applicants'] character is beyond all price. In such circumstances, [the intervening applicants] are entitled to intervene*

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to dispute the serious and damaging allegations made and to place direct evidence before this Court for it to determine the correctness or otherwise of the serious and damaging allegations against [them] on which the [Calata] applicants rely for their relief."

13. The Calata applicants disagree with this contention. The intervening applicants have no direct and substantial interest in the main application given that no relief is sought against them in their personal capacities. The relief they seek is against the current President and the Minister of Justice, both of whom have been cited as respondents in the main application.

14. Should the intervening applicants wish to set the record the straight, the commission of inquiry (**"COI"**) contemplated in prayers 6.1 and 6.2 of the notice of motion is the appropriate forum. It is that body which will have the power to investigate allegations and make findings. The President has already undertaken to establish the aforesaid commission by the end of May.

15. The President's undertaking, which was made in the context of settlement negotiations between the parties to the main application, is recorded in paragraph 25 of the minutes of the Case Management meeting of 15 April 2025 chaired by the Honourable Deputy Judge President. A copy of the minutes of this case management meeting are attached as Annexure **"LC1"**.

16. As appears from Annexure **"LC1"**, the intervening applicants were represented at the case management meeting. They accordingly have known since 15 April 2025 that a COI will be established to investigate *inter alia* whether they and/or State officials under their control attempted to influence or pressure members of the National Prosecuting Authority and/or the South

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African Police Service to stop investigating and/or prosecuting the TRC cases. In the circumstance they will have ample opportunity to ventilate their various issues before the COI. There is no need to do so before this Court which does not have to determine what roles they played.

17. Notwithstanding their knowledge since 15 April 2025 that there will be a COI established with terms of reference that will enable them to fully ventilate their issues, the intervening applicants have persisted with this application. This, I respectfully submit, constitutes an abuse of court proceedings and warrants a punitive costs order against the intervening applicants.

18. This conduct of the intervening applicants is all the more egregious because, unlike the COI to be established, I am advised that this Honourable Court is not required to investigate the roles of the intervening applicants, let alone to make any findings in respect of them.

18.1. Now that the President has committed to establishing a COI to investigate, *inter alia* the issues covered by prayers 6.1 and 6.2 of the notice of motion in the main application, this Honourable Court will only be asked to determine whether the applicants have made out a sufficient case to warrant a declaration of rights and the award of constitutional damages.

18.2. In so doing, this court does not have to decide whether the intervening applicants were involved in or were behind the alleged political interference.

MC LC

18.3. The court only has to determine whether state interventions in the work of the law enforcement authorities prevented the bulk of the TRC cases from being pursued post the winding up of the TRC.

18.4. It does not have to determine why the TRC cases were blocked, how this occurred, still less who was responsible. That will be the job of the COI.

19. In any event, I am advised that it is settled law that persons who fear that findings impacting on their reputation might be made in legal proceedings do not have a basis to intervene, since this would seriously complicate the legal process, be it a motion, action or trial in a court of first instance or on appeal.

20. Remarkably this is not the first time that Mr Mbeki has attempted to intervene in proceedings in which he felt aspersions had been cast upon his character. In an earlier matter, ironically also dealing with claims of political interference, the Supreme Court of Appeal dismissed his application on the grounds that negative findings or disparagement do not constitute a direct or substantial interest to intervene.

21. Notwithstanding that precedent, Mr Mbeki is attempting to intervene again on the very same basis. His attempt flies in the face of not only that judgment but other case law, including the Constitutional Court finding in *Lebea v Menye and Another* [2022] ZACC 40; 2023 (3) BCLR 257 (CC).

No direct and substantial interest in the outcome of the main application

22. As pointed out above, the intervening applicants do not challenge or oppose the relief sought by the Calata applicants. At no point in their papers do they

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allege that the Calata applicants are not entitled to the relief they seek. They merely seek to "*challenge the tarnishing allegations that underpin the Calata applicants*" application for relief.

23. They do not deny that the Calata applicants are entitled to a declarator in relation to the deep violation of their rights arising from suppression of the TRC cases; nor do they dispute that the victims and families are entitled to constitutional damages to vindicate their violated rights.

24. Significantly, nowhere in the papers do the intervening applicants deny that the TRC cases were blocked.

24.1. Indeed, Mr Mbeki admitted as much in a public statement dated 1 March 2024 annexed to the Calata applicants' founding affidavit marked **FA65**.

24.2. In this statement Mbeki disputed the SCA finding in the Rodrigues matter that "*investigations into the TRC cases were stopped as a result of an executive decision*". In that case the NPA admitted that political interference had stopped the TRC cases.

24.3. Mr Mbeki strenuously denied that he or any member of his administration interfered with the TRC cases and laid responsibility for the failure to prosecute squarely with the NPA. He called on them to apologise:

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

LC

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25. I am advised that our courts have found that where an intervening applicant has no interest in the order sought, but only in the reasoning of the order, then such a person does not have a direct and substantial interest to participate in the litigation. Accordingly intervening simply to "*challenge the tarnishing allegations that underpin*" the relief sought does not provide a basis for a direct and substantial interest to take part in the case.

26. Quite aside from the general principle, this is an *a fortiori* case for not allowing third parties to intervene in proceedings where they have no direct and substantial interest in the relief sought by the applicants.

26.1. This is because the only remaining respondent who has not withdrawn its opposition to the relief claimed by the Calata applicants in the main application is the fourth respondent (**"the NDPP"**).

26.2. Moreover, the ambit of the remaining dispute between the Calata applicants and the NDPP is extremely narrow, being confined to the ambit of the declaratory relief sought in Prayer 1 of the notice of motion.

26.3. As reflected in paragraph 34 of Annexure **LC1** this narrow dispute has now been settled in principle between the Calata applicants and the NDPP. It will only remain a live issue if the remaining respondents are entitled to reinstate their opposition to the application, a matter that will be decided in a hearing in late July or early August 2025.

M LC

26.4. There is accordingly a real prospect that by August 2025, all the relief in the main application may have been settled or capable of resolution in an unopposed hearing.

26.5. In the circumstances, it would be particularly inappropriate to allow the intervening applicants, to delay resolution of the relief claimed in the main application, when they have no interest in that relief.

AD SERATIM ANSWERS

27. I now turn to answer the averments of the intervening applicants. I do not intend to address each and every claim advanced by Mr Mbeki because I am advised that it is not necessary.

28. As a result of this, I will focus mainly on those allegations that deal with the question as to whether the intervening applicants have a direct and substantial interest warranting their intervention in the main application. In doing so I will attempt to avoid unnecessary repetition.

29. With regards to the remaining factual allegations in relation to the general role of the intervening applicants in respect of the TRC cases, I am advised that this Court is not the proper forum to deal with such claims. The intervening applicants will be free to pursue them before the commission of inquiry.

Ad paragraphs 1 – 15

30. The contents of these paragraphs are noted. I dispute the claim that all of the deponent's claims are true and correct.

MJ HC

31. The characterisation of the relief sought is admitted to the extent that it accords with the prayers in the Calata applicants' notice of motion.

32. Any and all claims that there was no interference by the executive in the work of the NPA in relation to the TRC cases are disputed.

33. The suggestion that the Calata application specifically targeted the intervening applicants is denied. As mentioned above, no relief is sought against them or anyone else in their personal capacity.

34. The claims that the intervening applicants have legal standing to intervene and that they have a direct and substantial interest in the proceedings are denied, for the reasons set out above.

Ad paragraphs 16 – 17

35. It is specifically denied that the Court has to make findings on the specific roles played by the intervening applicants in order to grant the relief sought by the Calata applicants.

36. The Court only has to determine whether or not state interventions in the TRC cases blocked them from proceeding post the winding up of the TRC. Such a finding provides sufficient basis for the granting of the relief sought.

37. In this regard the NPA has already admitted in the *Rodrigues* case that "*the the executive branch of the State took what one can describe as political steps to manage the conduct of criminal investigations and possible prosecution*" of the TRC cases.

38. The NPA claimed that delays in prosecuting the TRC cases were not the result of its "*own doing or its malice – it was as a result of the political interference and the 'severe political constraints…'*" (paras 2.11 – 2.12 of the affidavit of TP Pretorius SC annexed to my founding affidavit as '**FA50**').

39. All the other respondents withdrew their notices to oppose this application, presumably because they did not intend to dispute that political interference blocked the TRC cases from proceeding.

40. The Court does not have to identify the individuals behind such interventions or make findings on the roles of specific persons, which will be the responsibility of the COI.

41. I deny that the intervening applicants are entitled to intervene in these legal proceedings to dispute and correct "*damning allegations*" made against them. They are entitled to participate in the COI, which is in the process of being established, where they will have a full opportunity to interrogate the claims made by others, put up their own versions and rebut allegations made against them.

42. As mentioned above, the correctness or otherwise of allegations in relation to specific individuals, such as the intervening applicants, do not have to be decided in order to reach judgment on the merits of the relief sought.

43. Many individuals in three different administrations, not just the Mbeki administration, are mentioned in the founding papers. I am advised that:

MC HC

43.1. On Mr Mbeki's rationale, adverse allegations in respect of these numerous 'third parties' would entitle them to intervene in order to dispute the various claims.

43.2. This would involve multiple legal teams arguing over factual disputes that do not have to be resolved for purposes of the relief sought.

43.3. The Constitutional Court has found that such a practice would result in delays, increase the cost of litigation, and seriously complicate the adjudication process.

44. In the circumstances the various claims by the intervening applicants that their constitutional rights will be infringed if they cannot intervene are without merit. This is particularly so in the context where they will be able to participate in a COI set up specifically to make determinations on the allegations in question.

45. I am advised that the claim of Mr. Mbeki (in para 16.2 of his affidavit) that the ruling of the Constitutional Court against aggrieved third parties intervening in litigation only applies in respect of appeals is incorrect. The principles set out by the apex court also apply in respect of courts of first instance.

46. The Constitutional Court cautioned against allowing a witness to intervene at the stage of an appeal on an 'attack of character' interest, as he or she "*might also then be entitled to intervene before judgment is given and to be represented at the trial of the action or at the hearing of the opposed application, if it appeared that that person's credibility or reputation could be the subject of an adverse credibility finding.*"

LC

47. Since this Honourable Court has not been asked to make determinations of individual responsibility the claims that the finding of the court could expose the intervening applicants to personal liability is without foundation. In any event, if the intervening applicants were ever to be sued personally in relation to their conduct concerning the TRC cases, they would have ample opportunity to defend themselves in proceedings where they were sued personally.

48. The intervening applicants complain that the commission of inquiry will investigate their conduct while they were President and Minister of Justice. They claim that this gives them a direct and substantial interest in the outcome of the application.

48.1. I am advised that they are mistaken. The COI, which is to be established regardless of the outcome of the legal proceedings, will inquire into the roles of all connected to the subject matter, including the intervening applicants.

48.2. However, those whose conduct will come under scrutiny by the commission enjoy no rights under law or the Constitution not to have their conduct examined by a COI operating lawfully within its terms of reference.

49. The suggestion by Mr Mbeki that this court should develop the common law in order to circumnavigate the current rules, which do not permit third parties to intervene for purposes of disputing adverse allegations, is without merit.

MI LC

50. I am advised that the principles laid down by the Constitutional Court in respect of such third party interventions apply with equal force to this case. The apex court specifically declined an invitation to develop the common law to accommodate an 'attack on character' type interest. It is not open to this Honourable Court to develop the common law in circumstances where the Constitutional Court has specifically rejected the development in question.

Ad paragraphs 18 – 34

51. These paragraphs purport to set out the "*allegations underpinning the relief sought in the main application*." I am advised that there is no need to respond to these allegations as they do not provide a basis for an intervention. Accordingly, the various claims made on the back of these allegations are not admitted.

52. In addition, the accuracy of these paragraphs is disputed. Indeed, the attempt at a summary of the Calata applicants' founding papers has errors and cannot be described as accurate.

52.1. An example is the claim at para 32.1 where the Calata applicants apparently alleged that the political interference stemmed from the failure of the ANC to obtain "collective amnesty". We drew no such conclusion.

52.2. It is then claimed at para 32.2 that we alleged that a docket implicating 37 ANC leaders (compiled by a SAP veteran organisation) contained "*sufficient evidence to support criminal charges against ANC officials, including terrorism charges against former President Mbeki*." We

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made no such claim. It was made by a lawyer representing the notorious Dr Wouter Basson (para 397 of the FA).

52.3. Indeed, we highlighted at paras 267 – 268 that former NDPP Vusi Pikoli confirmed at a meeting on 23 August 2007 with former Minister Mabandla and other cabinet members that there was no investigation against the President or the ANC 37, and that both he and his predecessor had satisfied themselves that there was no basis for the ANC leadership to be investigated.

53. At times the summary is just plainly wrong, such as the claim at para 33.8 that Minister Mabandla complained in a letter dated 28 August 2007 that she had not been advised about the ANC 37 investigation and wanted to know the basis thereof. In fact, she was enquiring about the NPA's investigation into the forgery of a memo drawn up by Adv Anton Ackermann SC. This forgery, which falsely claimed that the NPA was investigating the 37, had appeared in the Rapport newspaper (para 265 of the FA and annex **FA38**).

Ad paragraphs 35 – 36

54. These paragraphs amount to a rehashing of the intervening applicants' reasons to intervene which we have already answered. We will not burden these papers by repeating those answers.

Ad paragraphs 37 – 102

55. The contents of paragraph 37 constitute bald and general claims. No particular fact is identified as materially false. This court can safely ignore this paragraph.

MC hC

56. The balance of the paragraphs purport to provide a "summary of facts to be provided" if permitted to intervene in the main application.

56.1. The contents of these paragraphs are not relevant for the purposes of determining this application. Indeed, some of it is not even relevant for purposes of the inquiry into the alleged political interference. In short, it provides no basis for an intervention.

56.2. If anything, the content of these paragraphs serves to highlight the need for the intervening applicants to participate in the COI which is to be established in the near future.

57. I am again advised that there is no need to respond specifically to these paragraphs. The allegations made therein are not admitted.

Ad paragraphs 103 – 105

58. These paragraphs constitute repetition in respect of claims that I have already answered. I will not burden these papers by repeating those answers.

CONCLUSION

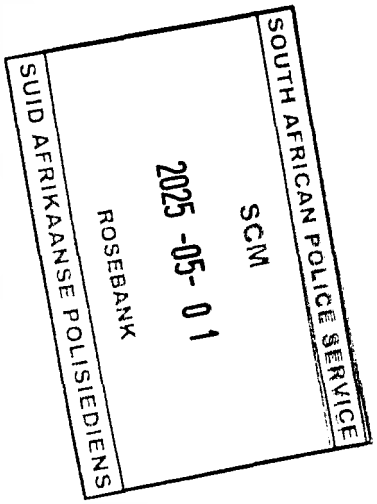
59. In the light of all of the above I respectfully submit that the application to intervene ought to be dismissed with costs.

MC hC

60. For the reasons set out above, I respectfully submit that the pursuit of the application to intervene, particularly after 15 April 2025, warrants a costs order on the attorney and client scale.

DEPONENT

Thus, signed and sworn to before me on this the 01 day of May **2025**, the Deponent having acknowledged that he knows and understands the content of the above affidavit, the regulations contained in the Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS
Full names:
Capacity:
Designation:
Address:

MC LC

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 5245/2025

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	6th Applicant
KIM TURNER	7th Applicant
LYNDENE PAGE	8th Applicant
MBUSO KHOZA	9th Applicant
NEVILLE BELING	10th Applicant
NOMBUYISELO MHLAULI	11th Applicant
SARAH BIBI LALL	12th Applicant
SIZAKELE ERNESTINA SIMELANE	13th Applicant
SINDISWA ELIZABETH MKONTO	14th Applicant

Mr LC

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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MINUTE: CASE MANAGEMENT MEETING DATED 15 APRIL 2025

INTRODUCTION

1. On 15 April 2025, at 15h00, a second case management meeting took place before the Honourable Deputy Judge President Ledwaba (the "**DJP**") by way of video conferencing via Microsoft Teams.

2. The purpose of the meeting was to apprise the DJP of the outcome of the settlement discussions between the parties and to request directives for the further conduct of the matter given that the parties could not reach full settlement.

PARTIES PRESENT

3. **For the Applicants**

3.1 Matthew Chaskalson SC (counsel);

3.2 Musatondwa Musandiwa (counsel);

3.3 Lene Brighton (counsel);

3.4 Nkosinathi Thema (Webber Wentzel);

3.5 Jos Venter (Webber Wentzel);

3.6 Lize-Mari Doubell (Webber Wentzel);

3.7 Gaura Moodley (Webber Wentzel);

3.8 Sipho Tlhaole (Webber Wentzel).

4. **For the First and Second Respondents**

4.1 Irene De Vos (counsel);

4.2 Ramathiti Sebelemetsa (State Attorney);

4.3 Portia Skhonde (State Attorney).

5. **For the Third Respondent**

5.1 Tlotlego Tsagae (counsel);

5.2 Ronald Baloyi (State Attorney).

6. **For the Fourth Respondent**

6.1 Makhosi Gwala SC (counsel);

6.2 Tlotlego Tsagae (counsel);

6.3 Nomonde January (counsel);

6.4 Ronald Baloyi (State Attorney).

7. **For the Fifth Respondent**

7.1 Tlotlego Tsagae (counsel);

7.2 Ronald Baloyi (State Attorney).

8. **For the Sixth Respondent**

8.1 Tlotlego Tsagae (counsel);

8.2 Ronald Baloyi (State Attorney).

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9. **For the *Amicus Curiae* (Helen Suzman Foundation)**

9.1 Max du Plessis SC (counsel);

9.2 Sarah Pudifin-Jones (counsel);

9.3 Chuma Bubu (Norton Rose Fulbright);

9.4 Art Wynberg (Norton Rose Fulbright).

10. **For the Intervening Parties (Thabo Mvuyelwa Mbeki and Brigitte Sylvia Mabandla)**

10.1 Nyoko Muvangua (counsel);

10.2 Max Boqwana (Boqwana Burns Attorneys).

DISCUSSION

11. The DJP initiated the discussion by inviting the parties to comment on the agenda circulated by the applicants and to indicate whether they wished to add any items to the agenda. A copy of the agenda is annexed hereto as "**A**".

12. The DJP sought confirmation from the intervening parties as to whether the intervention application has been served upon all the parties.

13. Ms Muvangua confirmed that an application to intervene has been filed in compliance with the DJP's direction that all intervening parties must file their application by 31 March 2025.

MC LC

14. Mr Musandiwa confirmed that the applicants have been served with the intervention application and that the applicants filed their notice to oppose on 7 April 2025. The answering affidavit will be filed on or before its due date.

15. The DJP enquired as to all the other parties' positions on the intervention application.

16. Ms de Vos indicated that the first and second respondents will not be opposing the intervention application.

17. Ms Tsagae indicated that the third, fifth, and sixth respondents will abide by the decision of the court.

18. Mr Gwala SC indicated that the fourth respondent will abide by the decision of the court.

19. The DJP directed that the intervention application follow its normal course: the papers will be exchanged between the parties and that the intervening parties and the applicants will liaise with each other about the filing of further papers and shall furnish the DJP the dates on which they will be available for the hearing of the application.

20. The DJP asked Mr du Plessis SC whether the *amicus'* application has been filed.

21. Mr du Plessis SC confirmed that the *amicus'* application was filed on 10 March 2025, and that there has been no opposition to the *amicus'* application. Mr du Plessis further stated that the *amicus* has considered the position outlined in the applicants' letter, dated 7 April 2025, regarding the potential settlement of the matter. Regarding the aspects that remain, in particular the declaratory relief – the *amicus*

MC LC

believes that it would be able to assist the court with submissions and therefore requests that the *amicus'* application be granted, and that the timetable going forward includes the *amicus*.

22. The DJP directed that he be furnished with a draft order from the *amicus* pending the finalisation of the intervention application.

23. Mr du Plessis SC confirmed that a draft order will accordingly be prepared and furnished to the DJP.

24. The DJP moved on to agenda item 3: An overview of settlement discussions – and asked for any comments from the parties.

25. Mr Chaskalson SC provided an overview of the outcome of the settlement discussions and indicated that the parties had agreed that

25.1 a commission of inquiry ("COI") would be established before the end of May 2025 and

25.2 the terms of reference of the commission would include those covered by prayer 6.1 and 6.2 of the notice of motion.

26. Mr Chaskalson SC indicated that the parties were not in agreement on the remaining terms of reference of the COI – giving rise to the remaining disputes.

27. Mr Chaskalson SC elucidated his understanding from the position of the counsel of the first and second respondent – which is that most of the relief sought by the applicants will ultimately form part of the COI's terms of reference. Mr Chaskalson SC invited counsel for the first respondent to also speak to their position.

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28. The DJP invited Mr Chaskalson SC to add any comments regarding the application for intervention.

29. Mr Chaskalson SC confirmed that the applicants will file an answering affidavit within the ordinary time limits.

30. The DJP invited the respondents to comment on the issue of the COI and its terms of reference.

31. Ms de Vos added that since there is settlement on the issue of a COI, it is the intention of the first respondent to include the issue of constitutional damages within the scope of the work of the COI and that there be a broader group of people who will participate – in terms of which their facts and interests may be considered. As such, Ms de Vos mentioned that prayers 1 to 3 contained in the applicants' notice of motion will be subsumed into the work of the COI.

32. Ms de Vos summed up by noting that in principle there is settlement between the parties regarding the establishment of a COI – which will address prayers 6.1 and 6.2, doing away with the need for prayers 4 and 5.

33. Ms Tsagae confirmed that the third, fifth, and sixth respondents are in agreement with what has been stated by Ms de Vos.

34. Mr Gwala SC mentioned that for the fourth respondent there is nothing to add save to say that there is an in-principle agreement between the fourth respondent and the applicants in respect of prayer 1. However, the agreement has its complications because other respondents are contesting it. The agreement can thus only be successful if other respondents agree to it.

MC hC

35. Mr Gwala SC indicated that the fourth respondent still has an issue with prayer 2 – the fourth respondent believes it can be resolved if by referring it to the COI. However, the understanding is that the applicants do not agree that prayer 2 should be referred to the COI.

36. The DJP proceeded onto item 4 of the agenda: Preliminary issues.

37. In respect of agenda item 4, the DJP directed that:

37.1 agenda item 4(a) and (b) can be dealt with at a later stage; and

37.2 in respect of agenda item 4(c), if there is an agreement that *amicus* applicant be admitted, a draft order will be sent to the DJP, and the DJP will make the draft order an order of court in chambers.

38. Mr Chaskalson SC added an agenda item that was not on the agenda - the first and second respondents have informed the applicants that they want to apply to stay the application in relation to the merits pending the COI.

39. Mr Chaskalson SC requested that this application scheduled to be heard together with the intervention application and the re-admission application, so that one Judge can hear all the applications.

40. The DJP directed that the parties can agree on the filing of further affidavits and heads of argument and indicate on which dates the parties would be available for the hearing of the two applications.

41. Mr Chaskalson SC requested the DJP for dates in terms of the available Judges who can hear the applications.

42. The DJP indicated the dates that are available in the second and third terms, are:

42.1 9 to 13 June 2025; and

42.2 28 July to 8 August 2025.

43. Mr Chaskalson SC confirmed that the hearing should take one day, and that the parties will revert to the DJP with dates on which they are available.

44. Ms de Vos indicated that dates in the second term: 9 to 13 June 2025 are too soon for a stay application to be instituted.

45. The DJP indicated that first and second respondents can look at the dates indicated for the third term: 28 July to 8 August.

CONCLUSION

46. The DJP indicated that he will proceed to manage the matter further depending on any information that the parties may furnish him.

47. The meeting concluded at 15h24.

For the Applicants: Asmita Thakor

Signed at **JOHANNESBURG** on this the 25th day of **APRIL 2025**

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MC LC

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For the First and Second Respondents: Ramathiti Sebelemetsa

Signed at **_Pretoria _____** on this the **_25th** day of **APRIL 2025**

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For the Third to Sixth Respondents: Ronald Baloyi

Signed at _____ on this the ____ day of **APRIL 2025**

NR Baloyi

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MC LC

For the Intervening Applicants: ~~Max Boqwana~~ IRVINE ARMOED

Signed at GOEBERHA on this the 29 day of **APRIL 2025**

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For the *Amicus Curiae*: Jason Whyte

Signed at Cape Town on this the 25th day of **APRIL 2025**

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 5245/25

In the matter between:

THABO MVUYELWA MBEKI	1st Applicant
BRIGITTE SYLVIA MABANDLA	2nd Applicant
And	
LUKHANYO BRUCE MATTHEWS CALATA	1st Respondent
ALEGRIA KUTSAKA NYOKA	2nd Respondent
BONAKELE JACOBS	3rd Respondent
FATIEMA HARON MASOET	4th Respondent
TRYPHINA NOMANDLOVU MOKGATLE	5th Respondent
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SIZAKELE ERNESTINA SIMELANE	13th Respondent
SINDISWA ELIZABETH MKONTO	14th Respondent
STEPHANS MBUTI MABELANE	15th Respondent
THULI KUBHEKA	16th Respondent
HLEKANI EDITH RIKHOTSO	17th Respondent
TSHIDISO MOTASI	18th Respondent
NOMALI RITA GALELA	19th Respondent

PHUMEZA MANDISA HASHE	20th Respondent
MKHONTOWESIZWE GODOLOZI	21st Respondent
MOGAPI SOLOMON TLHAPI	22nd Respondent
FOUNDATION FOR HUMAN RIGHTS	23rd Respondent
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	24th Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	25th Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	26th Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	27th Respondent
MINISTER OF POLICE	28th Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	29th Respondent

In re:

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	6th Applicant
KIM TURNER	7th Applicant
LYNDENE PAGE	8th Applicant
MBUSO KHOZA	9th Applicant
NEVILLE BELING	10th Applicant
NOMBUYISELO MHLAULI	11th Applicant
SARAH BIBI LALL	12th Applicant
SIZAKELE ERNESTINA SIMELANE	13th Applicant

SINDISWA ELIZABETH MKONTO	14th Applicant
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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FILING SHEET

DOCUMENT FILED: APPLICANTS REPLYING AFFIDAVIT

SIGNED AND DATED AT JOHANNESBURG ON THE 18TH of JUNE 2025

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TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**
PRETORIA

AND TO: **WEBBER WENTZEL**
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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 5245/25

In the matter between:

THABO MVUYELWA MBEKI	1st Applicant
BRIGITTE SYLVIA MABANDLA	2nd Applicant
And	
LUKHANYO BRUCE MATTHEWS CALATA	1st Respondent
ALEGRIA KUTSAKA NYOKA	2nd Respondent
BONAKELE JACOBS	3rd Respondent
FATIEMA HARON MASOET	4th Respondent
TRYPHINA NOMANDLOVU MOKGATLE	5th Respondent
KARL ANDREW WEBER	6th Respondent
KIM TURNER	7th Respondent
LYNDENE PAGE	8th Respondent
MBUSO KHOZA	9th Respondent
NEVILLE BELING	10th Respondent
NOMBUYISELO MHLAULI	11th Respondent
SARAH BIBI LALL	12th Respondent
SIZAKELE ERNESTINA SIMELANE	13th Respondent
SINDISWA ELIZABETH MKONTO	14th Respondent
STEPHANS MBUTI MABELANE	15th Respondent
THULI KUBHEKA	16th Respondent
HLEKANI EDITH RIKHOTSO	17th Respondent
TSHIDISO MOTASI	18th Respondent
NOMALI RITA GALELA	19th Respondent

PHUMEZA MANDISA HASHE	20th Respondent
MKHONTOWESIZWE GODOLOZI	21st Respondent
MOGAPI SOLOMON TLHAPI	22nd Respondent
FOUNDATION FOR HUMAN RIGHTS	23rd Respondent
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	24th Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	25th Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	26th Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	27th Respondent
MINISTER OF POLICE	28th Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	29th Respondent

In re:

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	6th Applicant
KIM TURNER	7th Applicant
LYNDENE PAGE	8th Applicant
MBUSO KHOZA	9th Applicant
NEVILLE BELING	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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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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REPLYING AFFIDAVIT

I, the undersigned,

THABO MVUYELWA MBEKI

do hereby make oath and say:

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1. I am an adult male and the former President of the Republic of South Africa. I served as South Africa's President from 14 June 1999 to 24 September 2008.

2. The facts deposed to in this affidavit are, to the best of my knowledge and belief, both true and correct. Unless stated otherwise or the contrary appears from the context, such facts are within my personal knowledge.

3. I also depose to this affidavit on behalf of the second applicant, Mrs Mabandla. Her confirmatory affidavit is attached to this affidavit. The legal submissions in this affidavit are made on advice from mine and Mrs Mabandla's legal representatives. We accept such legal advice as correct.

4. I have read the answering affidavit deposed to by **Lukhanyo Bruce Matthews Calata** on behalf of the first to the 23rd respondent (referred to as the "***Calata* applicants**" for convenience). The purpose of this affidavit is to respond thereto.

5. Since the filing of the affidavit, there have been developments in regard to the first to sixth respondents ("**the government respondents**") that have a bearing on this application.

6. On 26 May 2025, the government respondents filed an application to reinstate their notice of opposition in respect of the main application and to postpone or stay the main application pending the outcome of the commission of inquiry proclaimed by the second respondent, President Ramaphosa on 29 May 2025 ("**the stay application**").

7. The stay application has important implications for the main application and for our intervention application. I commence by addressing these implications.

THE IMPLICATIONS OF THE STAY APPLICATION ON THE INTERVENTION APPLICATION

8. In their notice of motion in the main application, the *Calata* applicants sought the following substantive relief against the government respondents:

8.1 a declarator that the conduct of the government respondents in unlawfully refraining and/or obstructing the investigation and/or prosecution of the apartheid-era cases referred by the Truth and Reconciliation Commission ("**TRC**") to the National Prosecuting Authority ("**the TRC cases**") until and including 2017,[1] or to otherwise unlawfully abandon or undermine such cases to be, inter alia, a violation of the applicants' and their families' rights and inconsistent with the rule of law ("**prayer 1**").

8.2 payment of constitutional damages by the first respondent (the President) in consequence of the breach of rights, and the establishment of a Trust to hold and disburse the funds ("**prayers 2 and 3**").

8.3 a declarator that the failure and/or refusal by the President to establish a commission of inquiry into the suppression of the investigation and prosecution of the TRC cases to be, inter alia, inconsistent with his constitutional duties; reviewing and setting aside the President's failure to

[1] In accordance with the notice of amendment dated 5 May 2025.

appoint a commission of inquiry; and directing the President to establish a commission of inquiry ("**prayers 4 to 6**").

9. The government respondents filed notices to oppose the main application. However, between 17 and 19 February 2025, the government respondents, with the exception of the National Director of Public Prosecutions ("**NDPP**"), withdrew those notices. The reason for the withdrawal of the opposition, according to the government respondents, was because Government and the President intended to establish a commission of inquiry which they believed was the overriding purpose of the main application.[2]

10. Pursuant to this withdrawal, the *Calata* applicants and the government respondents entered into settlement discussions and ultimately reached settlement in relation the establishment of a commission of inquiry (prayers 4 to 6 of the notice of motion). However, the terms of reference of the commission were not agreed between the parties.

11. On 30 April 2025, President Ramaphosa issued a statement announcing that he was in the process of setting up a judicial commission of inquiry to establish whether attempts were made to prevent the investigation or prosecution of apartheid-era crimes referred by the TRC to the National Prosecuting Authority ("**NPA**"). The President explained that while agreement had been reached on the establishment of a commission of inquiry, the parties were not able to reach settlement on the order to declare the conduct of various government entities

[2] Government respondents' stay application FA para 25.5.

unlawful and the payment of constitutional damages by the state. A copy of this statement is annexed hereto as **TM 1**.

12. On 1 May 2025, the Calata applicants delivered an answering affidavit in this application in which they opposed the application for leave to intervene. The main ground of opposition is that we do not have direct and substantial interest in the relief sought in the main application. In addition to this, the Calata applicants argued that it would not be in the interest of justice to allow intervention in circumstances where the parties in the main application have settled some issues and are likely to settle all the issues.[3] They explained in their answering affidavit that save for the NDPP, all the government respondents had withdrawn their opposition in the main application and that the remaining dispute between it and the NDPP was extremely narrow and had in principle been settled.[4] There was thus a real prospect, based on the government respondents' withdrawal of their opposition, that all the relief in the main application might be settled or capable of resolution in an unopposed hearing by August 2025.[5]

13. On 26 May 2025, the government respondents launched an application seeking orders (a) to reinstate the withdrawn notices of opposition in so far as they relate to the *Calata* applicants' prayers for an order to declare the conduct of various government entities unlawful and the payment of constitutional damages by the state and (b) to postpone or stay the main application pending the outcome of the commission of inquiry. The reason advanced for why the main application

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[3] Calata applicants' answering affidavit para 26 and subparas.

[4] Answering affidavit para 26.1-26.2.

[5] Answering affidavit para 26.4.

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should be postponed or stayed is that the President was in the process of establishing a commission of inquiry to look into the question whether there was unlawful interreference and collusion into the prosecution of the TRC cases, by who, and which investigations and prosecutions were interfered with.[6] The commission would hear and consider evidence of interference and collusion, and in the government's view, a conclusion of unlawful interference and collusion could only be made after a commission has heard and considered all the evidence.[7]

14. Importantly, the government respondents explained that the commission would also hear and consider evidence from all potential parties relevant to damages and would make a recommendation on damages after considering all the evidence relevant to the question of constitutional damages.[8] For these reasons, they say that until the commission has made findings of fact, it would be inappropriate and improper to argue unlawfulness or constitutional damages in the application.[9]

15. The government respondents also explained why the notices of opposition were withdrawn and why they should be reinstated. According to the government respondents, the oppositions were withdrawn because they perceived that the main purpose for the application by the Calata applicants was to establish a commission of inquiry, and the President and government were not opposed to

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[6] Stay application FA para 16 and subparas p 7-8.

[7] Stay application FA paras 16.2-16.3.

[8] Stay application FA paras 16.9-16.10.

[9] Stay application FA paras 26.7-26.8.

this.[10] They believed that the establishment of a commission of inquiry would result in the settlement of the main application. However, this did not happen, and the *Calata* applicants insisted that the main application proceeds on prayers 1, 2 and 3 at the same time that the commission proceeds to make findings that impact on unlawfulness and constitutional damages.[11] Accordingly, the oppositions should be reinstated so that the government respondents can address the merits in the main application.

16. The government respondents have highlighted a few grounds upon which they will oppose the main application. One of these grounds is that the facts relevant to interreference and collusion have not been established in the founding affidavit in the main application and that these facts cannot be established on the papers in motion proceedings. They must be established in the commission.[12] They say that "*there is no concrete allegation of interference in any of the applicants' cases or the case of another person. As for collusion, there is no clear allegation of collusion. There are allegations of delay and failures to prosecute but no allegation that these steps were taken as a result of interference by a person*".[13] A related ground is that the Calata applicants' founding affidavit makes clear that a commission of inquiry is the most appropriate way to uncover the truth relating to interference and collusion.[14]

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[10] Saty application FA paras 12.1-12.2.

[11] Stay application para 21-22.

[12] Stay application para 26.6.

[13] Stay application FA paras 26.1-26.2.

[14] Stay application FA para 26.5.

17. In short, the government respondents are seeking to reinstate their opposition on the basis that the facts relevant to interreference and collusion have not been established in the founding affidavit in the main application and that these facts cannot be established on the papers in motion proceedings. In their view, a commission of inquiry is a more appropriate forum to establish the facts. Thus, the main application should be stayed or postponed enabling the commission to inquire into the allegations and establish the facts from which unlawfulness and constitutional damages can be concluded.[15]

18. I annex the founding affidavit in the stay application as "**TM2**".

19. On 29 May 2025, the President issued the proclamation establishing the commission of inquiry. The proclamation provides, in relevant parts, that:

> "*The Commission is appointed to investigate matters of public and national interest concerning allegations regarding efforts or attempts having been made to stop the investigation or prosecution of the Truth and Reconciliation Commission ("TRC") cases.*
>
> 1. The Commission must, in relation to the period since 2003, inquire into, make findings, report on and make recommendations concerning the following . . .

[15] Paras 26.7-26.8.

1.1 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 investigation or prosecuting TRC cases;

1.2 whether any members of the South African Police Service or the National Prosecuting Authority colluded with such attempts to influence or pressure them; and

1.3 whether any action should be taken by any organ of state, including possible further investigation to be conducted or prosecutions to be instituted, where appropriate, of persons who may have acted unlawfully by –

1.3.1 attempting to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or stop prosecuting TRC cases;

1.3.2 members of the South African Police Service or the National Prosecuting Authority colluded with or succumbed to attempts to influence or pressure such members to stop investigating or prosecuting TRC cases; and

1.4 whether, in terms of the law and fairness, the payment of any amount in constitutional damages to any person is appropriate.

20. I annex the terms of reference as "**TM3**".

21. I highlight that in terms of paragraph 2 of the terms of reference, TM3, if admitted as parties in these proceedings we will be regarded as interested parties for purposes of the commission of inquiry.

22. At the time of deposing to this affidavit, the *Calata* applicants have not sought leave to file an amended notice of motion to address the aforementioned developments above. They have not sought leave to file a supplementary affidavit in the main application or in this application.

23. The establishment of the commission of inquiry and the stay application have implications for our application in the following ways:

23.1 First, our grounds for seeking intervention on the basis of the *Calata* applicants' commission related relief (calling for President Ramaphosa to establish a commission in inquiry) have fallen away. Once the *Calata* applicants file an amended notice of motion to address their commission related relief in the main application, what we say in our founding affidavit in relation to that relief will become moot.

23.2 The second implication for our application relates to the terms of reference of the commission. The terms of reference make it so that the question of whether there was interference with the investigation and prosecution of

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the TRC cases and whether government should pay constitutional damages (prayers 1 to 3 of the notice of motion in the main application) will now be addressed in the commission of inquiry.[16] We agree with the government respondents that these questions of fact are best dealt with in the commission of inquiry.

23.3 Third, the commission will inquire into, make findings, report on and make recommendations of inter alia unlawful interference and collusion since 2003, whereas the Calata applicants' founding affidavit makes allegations of unlawful interference since before 2003. Unless the terms of reference are amended, or the Calata applicants amend their notice of motion to confine their request for a declarator to 2003, the Court that determines the main application will need to assess and make determinations on pre-2003 conduct.

23.4 Fourth, elsewhere in this affidavit, I explained that one of the reasons that the government respondents have advanced for reinstating the notices to oppose is because they intend to argue that the facts relevant to interference and collusion relating to the applicants' TRC cases have not been established in the *Calata* applicants' main application.[17] They say that there is no concrete allegation of interference in the applicants' cases or that of another, and there is no clear allegation of collusion – there are no allegations that these steps were taken as a result of interference by a person.[18] It is clear from this that the government respondents intend to

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[16] Stay application FA para 16 and subparas, especially paras 16.9-16.15.

[17] Stay application FA para 26.1.

[18] Stay application paras 26.1-26.2.

advance a different case in the main application than we intend to if we are allowed to intervene since our case is that the *Calata* applicants' founding affidavit makes unfounded, false and damaging allegations of unlawful interference and collusion against me and Ms Mabandla. Contrary to the *Calata* applicants' recently adopted position in their answering affidavit, this Court is called upon to determine these unfounded and damaging allegations as they form the basis for the relief that they seek. That is why they made the allegations in the first place – because they are relevant and material to the relief that they seek. Thus, the fact that the government respondents have applied to reinstate the opposition does not serve to diminish our direct and substantial interest in the relief sought in the main application and in the judgment of this Court on the pleaded facts and the law.

23.5 Fifth, we agree with the government respondents that the facts of interference and collusion will be better addressed in the commission. Thus, we support the relief to stay or postpone the main application. At the same time, we are advised that this Court may still decide whether we have made out a case for direct and substantial interest in the relief in the main application. Hence, we pursue that case in this replying affidavit.

24. I turn to the *Calata* applicants' grounds for opposing the intervention. Since the stay application has yet to be determined, I address these grounds on the basis of the intervention papers as they stand.

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THE *CALATA* APPLICANTS' GROUNDS FOR OPPOSING THE INTERVENTION APPLICATION

25. The *Calata* applicants' opposition to the intervention application rests on the following core grounds:

25.1 First ground:[19] The relief sought in the main application is directed only at the state respondents (i.e. the current President and Minister of Justice), and not at any private individuals or former office bearers. Mrs Mabandla and I are not cited as respondents in our personal capacities, and we therefore lack a "direct and substantial interest" in the relief that is being sought.

25.2 Second ground:[20] The court is not being asked to decide whether Mrs Mabandla and I interfered in the TRC prosecutions. The only issue before the court is whether the *Calata* applicants have established a violation of rights and entitlement to declaratory relief and constitutional damages as a result of general state failures. Determining *who* was responsible for the political interference is not necessary for the relief to be granted; that will be for the commission of inquiry ("**COI**") to investigate and determine.

25.3 Third ground:[21] The President has undertaken to establish the COI by the end of May 2025, which will investigate, among other things, whether Mrs Mabandla and I, or state officials under our control interfered with the TRC

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[19] AA, paras 10; 13; 22 – 23.

[20] AA, paras 18.1 – 18.4; 35 – 36.

[21] AA, paras 14 – 16; 48.

prosecutions. The COI will provide a full opportunity for us to contest the allegations. The High Court is not the appropriate forum for determining these disputed facts.

25.4 Fourth ground:[22] Concern over reputational harm or "tarnishing allegations" does not amount to a direct and substantial interest sufficient to justify intervention. Allowing intervention on this basis would open floodgates which would allow any third party mentioned in proceedings to seek to intervene, thereby complicating litigation unnecessarily.

25.5 Fifth ground:[23] The only remaining respondent, the NDPP, has already settled the narrow dispute over prayer 1 of the notice of motion. All other state respondents have withdrawn their opposition. There is therefore a real risk that allowing our intervention would delay resolution of a matter that is effectively on the path to settlement. As explained earlier, this ground has been overtaken by events.

25.6 Sixth ground:[24] I have in the past, attempted to intervene in similar litigation relating to political interference, where the SCA dismissed my application. This, according to the *Calata* applicants confirms that disparaging allegations alone do not entitle a party to intervene.[25]

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[22] AA, paras 19 – 21; 25; 43.2 – 43.3.

[23] AA, paras26.2 – 26.5.

[24] AA, para 20.

[25] I must note that the *Calata* applicants' reference to the SCA proceedings is whole misplaced. The two applications are different and should not be conflated.

26. All these grounds misconstrue our basis for seeking an intervention. I respond thematically to them, before providing sequential responses to selected paragraphs of the answering affidavit. Allegations that I do not specifically respond to are denied.

NO RELIEF AGAINST INTERVENORS AND CHALLENGING TARNISHING ALLEGATIONS

27. Our reasons for seeking leave to intervene in the main proceedings are fully set out in the founding affidavit. I do not repeat them in detail here, save to highlight the key points where necessary.

28. The crux of our application to intervene is that the declaratory relief and consequent claim for constitutional damages sought by the *Calata* applicants are founded on serious allegations of unconstitutional, unlawful, and criminal conduct allegedly committed by me and Mrs Mabandla during our respective government tenures.

29. These allegations, which are directed primarily at us, form the factual foundation upon which the *Calata* applicants seek to obtain relief. Accordingly, we have a direct and substantial interest in the outcome of the proceedings.

30. It is telling that the *Calata* applicants amended prayer 1 of their notice of motion in the main proceedings to read as follows:

*"Declaring the conduct of the first to sixth respondents in unlawfully refraining and/or obstructing the investigation and/or prosecution of the apartheid-era cases referred by the Truth and Reconciliation Commission (**TRC**) to the National Prosecuting Authority (**the TRC cases**) until and including 2017, or to otherwise unlawfully abandon or undermine such cases to be."*

31. The amendment excludes only President Ramaphosa's tenure as President of the Republic and includes the period when I was South Africa's president.

32. In the absence of our version, the only evidence before this Honourable Court is in the *Calata* applicants' founding affidavit. There is therefore a real risk that, should we not be granted leave to intervene, the Court will be presented with a one-sided narrative, and the *Calata* applicants' allegations may be accepted as uncontested. If the legal requirements for the relief are found to be satisfied (which we dispute), such relief may be granted on the strength of allegations we have had no opportunity to rebut.

33. Accordingly, we do not seek to intervene, as the *Calata* applicants suggest, merely to "set the record straight" or out of concern that the Court's findings may affect our reputations.

34. Rather, we seek leave to intervene because the relief sought by the *Calata* applicants is expressly predicated on allegations of unlawful conduct purportedly committed by us (and other state officials) during our government tenure; allegations which we intend to dispute. These allegations have to be determined

by this Court to grant the relief the Calata applicants seek. That is the only reason why the *Calata* applicants made the allegations which they have not withdrawn. They cannot conveniently attempt to disavow this now to deny us a fair hearing.

35. Our purpose is to demonstrate why, insofar as the conduct is attributed to us, the applicants are not entitled to the relief that they seek. It is evident that we therefore have a direct and substantial interest in the outcome of these proceedings.

NO ENTITLEMENT TO THE RELIEF

36. The *Calata* applicants allege that we have not expressly stated our opposition to the relief sought in the main application. They further contend that we have not denied their entitlement to a declarator for the violation of their rights, nor have we disputed that victims and their families are entitled to constitutional damages. The basis for this assertion is unclear and unfounded.

37. In our founding affidavit, we clearly set out the facts demonstrating our opposition to the relief sought by the *Calata* applicants and our position that they are not entitled to such relief. These facts are summarised under the heading *"Summary of facts to be provided"* from paragraph 37 of that affidavit. Should we be admitted as respondents, we will be in a position to fully address the merits of the relief claimed and to respond substantively to the applicants' allegations.

THIS COURT WILL ONLY BE ASKED TO DETERMINE WHETHER THE *CALATA* APPLICANTS HAVE MADE OUT A SUFFICIENT CASE

38. The *Calata* applicants contend that the Honourable Court will only be asked to determine whether they have made out a sufficient case to warrant a declaration of rights and the award of constitutional damages. The Court does not have to decide whether we were involved in, or were behind the alleged political interference. They say that the Court only has to determine "*whether state interventions in the work of the law enforcement authorities prevented the bulk of the TRC cases from being pursued post the winding up of the TRC.*"

39. I am advised that, in determining whether to grant a declaratory order, this Honourable Court must *not* only be satisfied that the *Calata* applicants have an interest in a right or obligation, but must also consider whether, in all the circumstances, it is appropriate to grant or refuse the declarator. This involves an assessment of all relevant factors. The Court cannot grant the declarator in a vacuum. It will do so on the pleaded facts. Hence, the *Calata* applicants made the allegations attributing unlawful interference in the work of law enforcement authorities against us, which they have not withdrawn.

40. One such relevant factor is the nature of the alleged state interventions that, according to the *Calata* applicants, prevented the prosecution of the TRC cases. The *Calata* applicants allege that some of these interventions were carried out by me and Mrs Mabandla, or by other government officials acting under our direction.

41. In the founding affidavit filed in the main application, the *Calata* applicants set out what they contend are the "state interventions" that obstructed the pursuit of the TRC cases. These include serious allegations of unlawful conduct allegedly perpetrated by us with the intention of frustrating the prosecution of those matters.

42. To the extent that we are implicated in those alleged interventions, we seek to dispute them. The factual basis for the relief sought is contested, and we must be afforded an opportunity to present our version. If the *Calata* applicants were to agree, or the Court were to order, that prayers 1 to 3 in their notice of motion would be stayed to await the outcome of the commission of inquiry, then this application for intervention could be delayed until the outcome of the commission of inquiry. Until such agreement or order by the Court, this application is necessary.

43. This Honourable Court cannot determine the question of *whether interventions by state actors prevented law enforcement authorities from pursuing the bulk of the TRC cases after the TRC was wound up*, without first identifying what those interventions were and who was responsible for them. That determination requires a factual inquiry.

44. At present, the only allegations before the Court are those advanced by the *Calata* applicants, and they place our alleged conduct at the centre of the narrative. In the absence of our version, the Court would be left with an untested, one-sided false and damaging account of events. We must therefore be allowed to respond to and dispute those allegations.

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45. Accordingly, we do not accept the contention advanced by the *Calata* applicants that this Honourable Court is not required to determine whether we were involved in, or responsible for, the alleged political interference. That issue lies at the heart of the factual foundation on which the relief is based.

DELAY

46. Aside from the lack of a direct and substantial interest, the *Calata* applicants say that to allow our intervention in circumstances where the parties in the main application have settled and are likely to settle all the issues would delay resolution of the relief claimed when we have no interest in that relief.

47. This ground of opposition has been overtaken by the events set out at the outset of this affidavit.

48. Moreover, as stated earlier, the government respondents have mooted their intention to oppose on the basis that no facts of interference and collusion have been established. This is a different basis to what we intend to advance which makes it even more important that we be joined as respondents so that the Court would have all the relevant facts before it. It is understandable that the *Calata* applicants want a speedy resolution to the main proceedings, but this does not mean that we should be disallowed our right to oppose their relief. Our rights in terms of section 34 of the Constitution are equally important. We have a legal dispute with the *Calata* applicants that must be resolved by this Court in fair proceedings in which we are heard.

49. I turn now to respond to aspects of the answering affidavit.

SEQUENTIAL RESPONSES TO THE ANSWERING AFFIDAVIT

Ad paragraphs 1 to 3

50. I admit the allegations in these paragraphs.

Ad paragraphs 4 to 6

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

Ad paragraphs 7 to 8

52. I note the allegations in this paragraph.

Ad paragraphs 9 to 10

53. I admit the allegations in these paragraphs.

Ad paragraphs 11 to 13

54. I have addressed the allegations in these paragraphs earlier in this affidavit.

Ad paragraphs 14

55. I have explained that the purpose of the intervention is not to "set the record straight."

Ad paragraphs 15 to 16

56. I admit the allegations in these paragraphs in so far as they relate to the President's undertaking to establish a Commission of Inquiry and the case management meeting. Bearing in mind the terms of reference, I admit that the commission of inquiry is where we can and must ventilate the issues that we have raised in response to the relief claimed in the main application. If admitted as parties in these proceedings we will also be regarded as interested parties as defined in paragraph 2 of the terms of reference for the Commission of Inquiry. However, the *Calata* applicants are persisting with the main application. This means that at some point, this Court may be seized with the issues ventilated in the Commission. We have a right to also address those issues before the Cour when the time comes.

Ad paragraphs 17

57. I deny that the present application constitutes an abuse of court process warranting a punitive costs order against us. I have explained why we have sought leave to intervene as parties. The application for intervention is not only lawful and *bona fide*, but necessary in circumstances where the Court is being asked to make determinations that rely on serious allegations of unlawful, unconstitutional and criminal conduct on our part and which the Court must determine in order to grant relief. The *Calata* applicants' insistence that we have

no right to be heard in a matter in which we are effectively placed on trial, is itself vexatious and manifestly inconsistent with the requirements of fairness and the *audi* principle, which is a bedrock of our country's constitutional dispensation.

Ad paragraph 18 to 18.4

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

Ad paragraphs 19 to 21

59. I have addressed these allegations earlier in this affidavit and explained the basis for seeking to intervene. They are denied. We are not simply concerned with reputational harm, but with being denied the right to be heard in a matter that directly implicates us in the legal and factual foundation of the relief sought.

Ad paragraphs 22 to 23

60. I have addressed these allegations earlier in this affidavit and explained the basis for seeking to intervene. They are denied.

Ad paragraphs 24, including its sub-paragraphs

61. I deny the allegations contained in these paragraphs. They misinterpret both our papers and the public record.

62. The statement dated 1 March 2024 annexed to the founding affidavit (FA65) does not constitute an "admission" that TRC cases were blocked by executive action.

63. The statement expressly rejects the SCA's interpretation in *Rodrigues*, that an "executive decision" was responsible for the cessation of investigations. I stated, in clear terms, that political interference was not the cause, and I challenged the inference drawn by the SCA. That cannot, by any logical means, be construed as an admission of culpability as alleged by the *Calata* applicants in the main application.

64. I expressly disagreed with the characterisation of the executive's role in the *Rodrigues* case. This is not an admission but a challenge to the version that now underpins the *Calata* applicants' main application.

65. I confirm the statement attributed to me in which I laid responsibility for the prosecution of *TRC* cases with the NPA. This is consistent with the constitutional and statutory framework governing prosecutorial independence.

Ad paragraph 25 to 26

66. I have addressed the allegations in these paragraphs. They are denied.

Ad paragraphs 27 to 28

67. I note the allegations in these paragraphs.

Ad paragraph 29

68. I have addressed the allegations in this paragraph. They are denied.

Ad paragraphs 30 to 34

69. I note the allegations in these paragraphs. To the extent that they are at odds with what we alleged in our founding papers, they are denied.

Ad paragraphs 35 to 44

70. I have addressed the allegations in these paragraphs to the extent that they seek to mischaracterise the basis upon which we seek to intervene, the questions for the Court in deciding the declarator and the damages claim, and the value of the commission of inquiry in regard to the relief sought by the *Calata* applicants in the main application. Accordingly, the allegations are denied.

71. I deny the implication that the NPA's admission in *Rodrigues* resolves the issues in the main application. The present case will be determined on the facts alleged, including those alleged against us.

72. That the government respondents initially withdrew their opposition to the main application does not mean that we do not have a legal interest in the relief.

73. The "open season" argument that the *Calata* applicants seek to raise does not arise. I am advised that if any other person claims that they have a legal interest,

the Court will determine that person's claim on their particular facts. Moreover, the *Calata* applicants' papers in the main application do not indiscriminately implicate a broad array of individuals; they specifically and repeatedly attribute culpability for the alleged suppression of TRC prosecutions to me, Mrs Mabandla, and members of our administration. There is thus a targeted narrative that places our conduct at the heart of the alleged unlawful and unconstitutional conduct in blocking the investigation/prosecution of TRC cases.

74. The assertion that allowing intervention would "increase the cost of litigation" is a red herring. The right to a fair hearing under section 34 of the Constitution cannot be subordinated to administrative convenience.

75. Furthermore, the reference to "multiple legal teams" is equally misplaced and fanciful. The *Calata* respondents' own papers narrow the scope of alleged culpability to our administration. Our intervention would not open floodgates but would ensure that the Court's findings rest on a complete evidentiary record.

Ad paragraphs 45 to 46

76. I am advised that this will be addressed in legal argument.

Ad paragraph 47

77. I have addressed the allegations regarding what the Court would assess to determine the relief. Accordingly, the allegations in this paragraph are denied.

Ad paragraph 48, including its subparagraphs

78. The establishment of the commission of enquiry has been settled. Accordingly, these allegations are no longer relevant.

Ad paragraphs 49 to 50

79. I have addressed the reasons for seeking leave to intervene. The allegations in these paragraphs are denied – and the principles cited irrelevant. I am advised that the question of the development of the common law will be addressed in legal argument.

Ad paragraphs 51 to 54

80. I deny the assertion by the *Calata* respondents that our summary of the *Calata* respondents' papers is incorrect. The summary accurately reflects the allegations made against us in the main application, which form the basis of the relief sought. Any suggestion to the contrary is without merit.

Ad paragraphs 55 to 58

81. I deny that the allegations contained in these paragraphs. These paragraphs are pertinently relevant. If allowed to intervene, we will deal fully with the allegations in the founding affidavit.

CONCLUSION

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

THABO MVUYELWA MBEKI

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at JOHANNESBURG on this the 25 day of JUNE 2025, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

COMMISSIONER OF OATHS
Full names: **Goodman Ntandazo Vimba**
Address: Practising Attorney
Capacity: Commissioner of Oaths
1st floor 357 Rivonia Boulevard
Rivonia
Sandton, 2128
Tel: 011 238 7991

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 5245/25

In the matter between:

THABO MVUYELWA MBEKI	1st Applicant
BRIGITTE SYLVIA MABANDLA	2nd Applicant
And	
LUKHANYO BRUCE MATTHEWS CALATA	1st Respondent
ALEGRIA KUTSAKA NYOKA	2nd Respondent
BONAKELE JACOBS	3rd Respondent
FATIEMA HARON MASOET	4th Respondent
TRYPHINA NOMANDLOVU MOKGATLE	5th Respondent
KARL ANDREW WEBER	6th Respondent
KIM TURNER	7th Respondent
LYNDENE PAGE	8th Respondent
MBUSO KHOZA	9th Respondent
NEVILLE BELING	10th Respondent
NOMBUYISELO MHLAULI	11th Respondent
SARAH BIBI LALL	12th Respondent
SIZAKELE ERNESTINA SIMELANE	13th Respondent
SINDISWA ELIZABETH MKONTO	14th Respondent
STEPHANS MBUTI MABELANE	15th Respondent
THULI KUBHEKA	16th Respondent
HLEKANI EDITH RIKHOTSO	17th Respondent
TSHIDISO MOTASI	18th Respondent
NOMALI RITA GALELA	19th Respondent

PHUMEZA MANDISA HASHE	20th Respondent
MKHONTOWESIZWE GODOLOZI	21st Respondent
MOGAPI SOLOMON TLHAPI	22nd Respondent
FOUNDATION FOR HUMAN RIGHTS	23rd Respondent
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	24th Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	25th Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	26th Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	27th Respondent
MINISTER OF POLICE	28th Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	29th Respondent

In re:

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	6th Applicant
KIM TURNER	7th Applicant
LYNDENE PAGE	8th Applicant
MBUSO KHOZA	9th Applicant
NEVILLE BELING	10th Applicant
NOMBUYISELO MHLAULI	11th Applicant
SARAH BIBI LALL	12th Applicant
SIZAKELE ERNESTINA SIMELANE	13th Applicant

SINDISWA ELIZABETH MKONTO	14th Applicant
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

---

CONFIRMATORY AFFIDAVIT

I, the undersigned,

BRIGITTE SYLVIA MABANDLA

do hereby make oath and say:

TM. [illegible]

1. I am an adult female and a former Minister of Justice and Constitutional Development 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 am the second applicant.

4. I have read the founding affidavit deposed to by former President, **Thabo Mvuyelwa Mbeki** and confirm that the averments therein, in as far as they relate to me.

BRIGITTE SYLVIA MABANDLA

I certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and deposed before me at JOHANNESBURG on this the 25 day of June 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

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

President Cyril Ramaphosa to establish Commission of Inquiry into delay in investigation and prosecution of TRC cases

30 Apr 2025

President Cyril Ramaphosa is in the process of establishing a judicial commission of inquiry to establish whether attempts were made to prevent the investigation or prosecution of apartheid-era crimes referred by the Truth and Reconciliation Commission (TRC) to the National Prosecuting Authority.

Allegations of improper influence in delaying or hindering the investigation and prosecution of apartheid-era crimes have persisted from previous administrations. Through this commission, President Ramaphosa is determined that the true facts be established and the matter brought to finality.

The establishment of the commission of inquiry is the outcome of settlement discussions in a court application brought by families of victims of apartheid-era crimes.

Following discussions involving the Presidency, the families and other government bodies cited in the application, there was a joint agreement to establish the commission.

This follows the Presidency's statement in February 2025 in support of a commission that will look into the delays in the prosecution of these cases.

While the parties have agreed to the establishment of the Commission of Inquiry, they were not able to reach a settlement on other matters in the application.

These include the application for an order that declares the actions of various government entities unlawful and a violation of the applicants' rights, as well as the payment of constitutional damages by the state.

Government has maintained that these outstanding matters would be most appropriately addressed through the Commission of Inquiry, and will therefore be included in the commission's terms of reference.

President Ramaphosa continues to maintain that all affected families deserve closure and justice.

A commission of inquiry with broad and comprehensive terms of reference is an opportunity to establish the truth and provide guidance on appropriate remedies.

President Ramaphosa appreciates the anguish and frustration of the families of victims, who have fought for so many years for justice.

The President respects the decision of the families to continue to seek an order on the violation of their rights and constitutional damages through the courts.

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Government will be seeking a stay of application on these outstanding matters pending the conclusion and outcomes of the Commission of Inquiry.

The Presidency will shortly make an announcement on the head of the Commission of Inquiry, the time frames and the full terms of reference.

Enquiries:
Vincent Magwenya, Spokesperson to the President
E-mail: Media@presidency.gov.za

#GovZAUpdates

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More from: The Presidency
More on: Legal issues

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 5245/25

In the matter between:

LUKHANYO BRUCE MATTHEWS CALATA	First Applicant
ALEGRIA KUTSAKA NYOKA	Second Applicant
BONAKELE JACOBS	Third Applicant
FATIEMA HARON MASOET	Fourth Applicant
TRYPHINA NOMANDLOVU MOKGATLE	Fifth Applicant
KARL ANDREW WEBER	Sixth Applicant
KIM TURNER	Seventh Applicant
LYNDENE PAGE	Eighth Applicant
MBUSO KHOZA	Ninth Applicant
NEVILLE BELING	Tenth Applicant
NOMBUYISELO MHLAULI	Eleventh Applicant
SARAH BIBI LALL	Twelfth Applicant
SIZAKELE ERNESTINA SIMELANE	Thirteenth Applicant
SINDISWA ELIZABETH MKONTO	Fourteenth Applicant
STEPHANS MBUTI MABELANE	Fifteenth Applicant
THULI KUBHEKA	Sixteenth Applicant
HLEKANI EDITH RIKHOTSO	Seventeenth Applicant
TSHIDISO MOTASI	Eighteenth Applicant
NOMALI RITA GALELA	Nineteenth Applicant

TMC-H

PHUMEZA MANDISA HASHE	Twentieth Applicant
MKHONTOWESIZWE GODOLOZI	Twenty-First Applicant
MOGAPI SOLOMON TLHAPI	Twenty-Second Applicant
FOUNDATION FOR HUMAN RIGHTS	Twenty-Third Applicant

And

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	Third Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Fourth Respondent
MINISTER OF POLICE	Fifth Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	Sixth Respondent
HELEN SUZMAN FOUNDATION	*Amicus Curiae*
THABO MVUYELWA MBEKI	1st Intervening Party
BRIGITTE SYLVIA MABANDLA	2nd Intervening Party

NOTICE OF MOTION

TA BE PLEASED TO TAKE NOTICE that the Applicants in this matter, being the First and Second Respondents in the main proceedings, will on the **06TH** day of **AUGUST 2025** at **10H00am** apply to the above Honourable Court for an order in the following terms:

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1. The notices of intention to oppose delivered on 10 February 2025 (Minister of Justice and NDPP) and 17 February 2025 (President, Government, Minister of Police and National Commissioner of Police) and withdrawn on 18 February 2025 (President, Government and Minister of Justice) and 19 February 2025 (Minister and Commissioner of Police) are reinstated in respect of prayers 1, 2, 3 and 7 of the Notice of Motion dated 17 January 2025, as amended;

2. The application in respect of prayers 1, 2, 3 and 7 of the Notice of Motion dated 17 January 2025, as amended, is postponed, alternatively stayed, pending the outcome of the Commission of Inquiry into the following:

2.1 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;

2.2 Whether any members of the South African Police Service or the National Prosecuting Authority improperly colluded with such attempts to influence or pressure them; and

2.3 Whether any action should be taken by any Organ of State, including possible further investigations to be conducted or prosecutions to be instituted, where appropriate, of persons who

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may have acted unlawfully by attempting to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases;

2.4 Or, whether members of the South African Police Service or the National Prosecuting Authority colluded with or succumbed to attempts to influence or pressure such members to stop investigating or prosecuting TRC cases; and

2.5 Whether, in terms of the law and principles of fairness, the payment of any amount in constitutional damages to any person would be appropriate.

TAKE FURTHER NOTICE that the affidavit of **GEOFREY MPHAPHULI** together with all annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that should you intend to oppose this application, you are required to notify the Applicants' Attorneys within five (5) days from the service of this application, and to appoint an address in such notice as meant in rule 6(5)(b) of the Uniform Rules of Court, at which you will accept notice and service of all documents. You are then also

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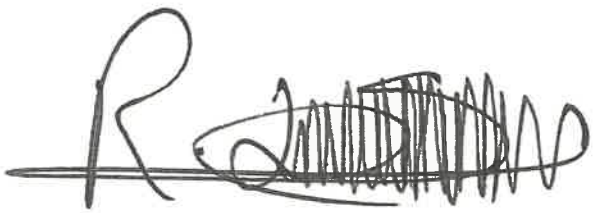
required to deliver your answering affidavit by no later than the **18th** day of **JUNE 2025**.

TAKE FURTHER NOTICE that the Applicants have appointed the **STATE ATTORNEY** as their attorneys of record and will accept notice and service of all documents in these proceedings at their undermentioned address.

TAKE FURTHER NOTICE THAT the Applicants will accept electronic service at: rsebelemetsa@justice.gov.za and ramatics@gmail.com

DATED AND **SIGNED** AT **PRETORIA** ON THIS THE **26TH** DAY OF **MAY 2025**.



ATTORNEY FOR FIRST & SECOND RESPONDENTS
THE STATE ATTORNEY, PRETORIA
316 SALU BUILDING
CNR FRANCIS BAARD & THABO SEHUME
GROUND FLOOR
ENTRANCE THABO SEHUME STREET
PRIVATE BAG X91
PRETORIA
TEL: (012) 309 1623/1539
FAX: (012) 309 1649/50
DIRECT FAX: 086 507 1910
EMAIL: rsebelemetsa@justice.gov.za
REF: 0266/2025/Z64
ENQ: MR RJ(JOSEPH) SEBELEMETSA

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
PRETORIA

TM. 5

AND
TO: APPLICANTS' ATTORNEY
WEBBER WENTZEL
ATTORNEYS FOR APPLICANTS
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REF: W2565

"SERVICE PER EMAIL"

AND
TO: THE STATE ATTORNEY
3RD, 4TH, 5TH & 6TH RESPONDENTS' ATTORNEYS
SALU BUILDING 316
THABO SEHUME STREET
PRETORIA, 0002
REF: 00188/25/Z83
TEL: 012 309 1653
FAX: 086 642 7536
EMAIL: RonBaloyi@justice.gov.za
Enq: Mr. N.R. Baloyi

"SERVICE PER EMAIL"

AND
TO: **BOQWANA BURNS ATTORNEYS**
ATTORNEYS FOR THE INTERVENING PARTIES
1ST FLOOR
357 RIVONIA BOULEVARD
RIVONIA
JOHANNESBURG
EMAIL: irvine@boqwanaburns.com
aneesa@boqwanaburns.com
REF: IRVINE FERGUS ARMOED
c/o NGENO AND MTETO INC

TMS 6 C.M

NO. 239 BRONKHORST STREET
UNIT 7, THE GUILD HOUSE
BROOKLYN
PRETORIA
EMAIL: tando@ngenomtetoinc.co.za

"SERVICE PER EMAIL"

AND
TO: **NORTON ROSE FULBRIGHT SOUTH AFRICA INC**
ATTORNEYS FOR THE AMICUS CURIAE
9TH FLOOR, 117 ON STRAND
117 STRAND STREET
CAPE TOWN
TEL: 021 405 1323
EMAIL: jason.whyte@nortonrosefulbright.com
chuma.bubu@nortonrosefulbright.com
REF: JASON WHYTE/ CHUMA BUBU PBO2992

"SERVICE PER EMAIL"

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case No: 5245/25

In the matter between:

LUKHANYO BRUCE MATTHEWS CALATA	First Applicant
ALEGRIA KUTSAKA NYOKA	Second Applicant
BONAKELE JACOBS	Third Applicant
FATIEMA HARON MASOET	Fourth Applicant
TRYPHINA NOMANDLOVU MOKGATLE	Fifth Applicant
KARL ANDREW WEBER	Sixth Applicant
KIM TURNER	Seventh Applicant
LYNDENE PAGE	Eighth Applicant
MBUSO KHOZA	Ninth Applicant
NEVILLE BELING	Tenth Applicant
NOMBUYISELO MHLAULI	Eleventh Applicant
SARAH BIBI LALL	Twelfth Applicant
SIZAKELE ERNESTINA SIMELANE	Thirteenth Applicant
SINDISWA ELIZABETH MKONTO	Fourteenth Applicant
STEPHANS MBUTI MABELANE	Fifteenth Applicant
THULI KUBHEKA	Sixteenth Applicant
HLEKANI EDITH RIKHOTSO	Seventeenth Applicant
TSHIDISO MOTASI	Eighteenth Applicant
NOMALI RITA GALELA	Nineteenth Applicant
PHUMEZA MANDISA HASHE	Twentieth Applicant
MKHONTOWESIZWE GODOLOZI	Twenty-First Applicant

TM 1 NA

MOGAPI SOLOMON TLHAPI	Twenty-Second Applicant
FOUNDATION FOR HUMAN RIGHTS	Twenty-Third Applicant
and	
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	Third Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Fourth Respondent
MINISTER OF POLICE	Fifth Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	Sixth Respondent

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FOUNDING AFFIDAVIT

I, the undersigned

GEOFREY MPHAPHULI

declare under oath:

Deponent

1. I am the Acting Head of the Legal and Executive Services Unit and the Principal State Law Adviser in the Presidency.

2. In my capacity as Acting Head: Legal and Executive Services Unit in the Office of the Presidency, I am responsible for the following:

   2.1 Management of litigation involving the President in his capacity as Head of State or Head of National Executive and the Presidency.

   2.2 Instructing the state attorney to brief counsel to represent the President

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and/or other officials employed in the Presidency.

2.3 Processing all Executive Acts of the President.

3. The facts below are within my personal knowledge and I believe them to be true and correct, unless otherwise stated or indicated by the context.

4. I am duly authorized by Government and the President to bring this application and to make this affidavit.

Nature of Application

5. The first and second respondents ("Government" and "the President") approach the Court seeking interlocutory relief. The relief sought is:

5.1 The notices of intention to oppose delivered on 10 February 2025 (Minister of Justice and NDPP) and 17 February 2025 (President, Government, Minister of Police and National Commissioner of Police) and withdrawn on 18 February 2025 (President, Government and Minister of Justice) and 19 February 2025 (Minister and Commissioner of Police) are reinstated in respect of prayers 1, 2, 3 and 7 of the Notice of Motion dated 17 January 2025, as amended;

5.2 The application in respect of prayers 1, 2, 3 and 7 of the Notice of Motion dated 17 January 2025, as amended, is postponed, alternatively stayed, pending the outcome of the Commission of Inquiry into the following:

5.2.1 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;

5.2.2 Whether any members of the South African Police Service or the National Prosecuting Authority improperly colluded with such attempts to influence or pressure them; and

5.2.3 Whether any action should be taken by any Organ of State, including possible further investigations to be conducted or prosecutions to be instituted, where appropriate, of persons who may have acted unlawfully by attempting to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases;

5.2.4 Or, whether members of the South African Police Service or the National Prosecuting Authority colluded with or succumbed to attempts to influence or pressure such members to stop investigating or prosecuting TRC cases; and

5.2.5 Whether, in terms of the law and principles of fairness, the payment of any amount in constitutional damages to any person would be appropriate.

6. The third to sixth respondents support this application and will file the necessary confirmatory affidavits.

7. I am advised and submit:

7.1 The High Court is empowered to grant this relief under its inherent powers to regulate its own proceedings. These powers are derived from the

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common law and section 173 of the Constitution.

7.2 The Court's powers to regulate its own process is wide, and the Court enjoys a broad discretion to grant the relief sought, constrained only by the interests of justice.

Brief Background

The TRC cases application

8. The applicants have brought an application against the Government, the President, the Ministers of Justice and Constitutional Development and Police, the National Commissioner of Police, and the National Director of Public Prosecutions.

9. The applicants allege:

9.1 There has been political interference in the investigation and prosecution of their or their families' apartheid-era cases referred by the TRC to the NPA ("TRC cases").

9.2 They have been denied justice and consequently, closure due to such interference.

10. Consequently, in their amended notice of motion, the applicants sought the following relief -

10.1 A declaration of unlawfulness against all respondents that they obstructed the investigation and prosecution of TRC cases (Prayer 1);

10.2 Payment by Government of constitutional damages in the amount of R 168 million to be paid into a Trust account (prayers 2 and 3);

TM. 5 NA

10.3 A review and finding of the President's failure to appoint a commission of inquiry to determine political interference and an order of unlawfulness against the President (Prayers 4 and 5);

10.4 An order that the President establish a Commission (Prayer 6); and

10.5 Costs against anyone opposing the application (Prayers 7 and 8).

11. The respondents initially filed notices of intention to oppose. But later, all respondents, except for the NDPP, withdrew those notices.

Why notices of opposition were withdrawn

12. Government and the President withdrew their notice of opposition because:

12.1 They perceived that the applicants demanded and desired the establishment of a Commission.

12.2 They were not opposed to and support the establishment of a Commission to inquire into the allegations of interference with the investigation and prosecution of the TRC cases and collusion with persons or entities allegedly guilty of interference.

12.3 The President intended to and decided to establish a Commission. That decision is supported by the rest of the respondents.

12.4 The President took advice on the terms of reference, in light of the complaints and allegations in the affidavit by applicants, and after considering terms of reference proposed by applicants in the founding affidavit.

TM. 6 NA

12.5 The Presidency inquired into and considered the logistics of establishing a Commission and then went about assisting the President to establish a Commission. Draft proclamations were produced for consideration by the President.

12.6 They believed that establishing the Commission would result in settlement of the application.

Commission of Inquiry

13. A proclamation (a copy of the draft for publication is annexure **GM1**) will be published before the end of May 2025.

14. Establishment of a Commission addresses prayers 4, 5 and 6 of the notice of motion and delivers the relief sought in those prayers.

15. That is also why, when Government and the President informed applicants that the President would establish a Commission, the costs of the application up to that stage were tendered. That tender addresses prayers 6 and 7.

Consequence of Establishing a Commission

16. Government and the President (supported by the rest of the respondents) submit that establishing the Commission has the following consequences:

16.1 Whether there was interference and collusion, by whom, and which investigations and prosecutions were interfered with, should be decided by the Commission.

16.2 A conclusion of unlawful interference and collusion can only properly be

TM. 7 NA

drawn after a Commission has heard and considered all the evidence.

16.3 A Commission would be hearing and considering evidence on interference and collusion.

16.4 On the precise number of persons affected by alleged interference and collusion are not known.

16.5 But at a minimum, there are 400 persons whose cases were referred to the NPA by the TRC for investigation (see para 620 of Mr Calata's affidavit in the main application). The applicants are 22 persons. They constitute 5,5 % of the affected group.

16.6 The Commission established by the President is not limited to the parties in the application. It is intended to include other parties who allege interference with the investigation and prosecution of their TRC cases or those of their families.

16.7 That should result in an inquiry that –

16.7.1 includes all potential parties and therefore an inquiry that is fair to all persons affected by interference;

16.7.2 includes all potential allegations of interference and collusion;

16.7.3 enables the Commission to make findings on all allegations by all potential parties of interference;

16.7.4 enables conclusions of unlawfulness to be drawn from the

TM. 8 CB N/A

evidence and findings on that evidence by the Commission;

16.7.5 bring an end to all allegations by all potential parties of interference and collusion and thereby finality on the ongoing TRC cases complaints.

16.8 The Commission includes parties and will hear allegations that are not limited to those in the application.

16.9 That is why it would be proper and sensible for that Commission also to hear and consider evidence from all potential parties relevant to damages and on the appropriate form/s that damages should take from all potential parties.

16.10 A recommendation on damages should be made only after hearing all parties and considering all the evidence relevant to the question of constitutional damages.

16.11 The terms of reference proposed, considered by the President and ultimately included in the proclamation to be published are wide.

16.12 They also address prayers 1, 2 and 3 of the notice of motion. That is in addition to the establishment of the Commission delivering the relief sought in prayers 4, 5 and 6.

16.13 By addressing prayers 1, 2 and 3, the establishment of the Commission allows for a full inquiry, participated in and contributed to by all potentially affected parties into the matters raised there.

TM. 9

16.14 These mainly concern the following questions. Are constitutional damages appropriate and fair? How much would be appropriate? How should damages be allocated? What form/s should damages take? How should damages awarded be most appropriately administered?

16.15 I am advised and submit that empowering the Commission to hear and consider evidence and make findings and recommendations on these matters, goes wider than what High Courts may order in constitutional damages claims.

Announcement

17. The Commission will be established before the end of May 2025 by Government Gazette promulgation. In anticipation of promulgation, the President announced (annexure **GM2**) the establishment of the Commission on 30 April 2025.

18. The announcement conveyed –

18.1 The President is in the process of establishing a judicial commission of inquiry to establish whether attempts were made to prevent the investigation or prosecution of apartheid-era crimes referred by the Truth and Reconciliation Commission to the National Prosecuting Authority.

18.2 Allegations of improper influence in delaying or hindering the investigation and prosecution of apartheid-era crimes have persisted from previous administrations. Through this Commission, Government is determined that the true facts be established and the matter brought to finality.

18.3 The establishment of the Commission of Inquiry is the outcome of

TM. NA

settlement discussions in a court application brought by families of victims of apartheid-era crimes.

18.4 Following discussions involving The Presidency, the families and other Government bodies cited in the application, there was a joint agreement to establish the Commission.

18.5 This follows the Presidency's statement in February 2025 in support of a Commission that will look into the delays in the prosecution of these cases.

18.6 While the parties have agreed to the establishment of the Commission, they were not able to reach a settlement on other matters in the application.

18.7 These include the application for an order that declares the actions of various Government entities unlawful and a violation of the applicants' rights, as well as the payment of constitutional damages by the State.

18.8 Government has maintained that these outstanding matters would be most appropriately addressed through the Commission, and will therefore be included in the Commission's terms of reference.

18.9 The President continues to maintain that all affected families deserve closure and justice.

18.10 A Commission with broad and comprehensive terms of reference is an opportunity to establish the truth and provide guidance on appropriate

remedies.

18.11 The President appreciates the anguish and frustration of the families of victims, who have fought for so many years for justice.

18.12 The President respects the decision of the families to continue to seek an order on the violation of their rights and constitutional damages through the courts.

18.13 Government will be seeking a stay of application on these outstanding matters pending the conclusion and outcomes of the Commission.

18.14 The Presidency will shortly make an announcement on the head of the Commission, the time frames and the full terms of reference.

19. The promulgation will take place before the end of May 2025. The process was affected by the following events:

19.1 The Commissioner and assessors have to be individuals who are not conflicted in the investigation. The process of ensuring the appointment of a Commissioner and assessors that met this requirement, required engagement and was a time-consuming exercise.

19.2 It has been well-publicized and widely known that during May 2025, the President has been busy with a number of pressing matters of international concern. They include preparing for and meeting the President of the USA.

Attempt to Settle

20. Government and the President agreed to discuss settlement of the application. The negotiations were without prejudice. The outcome was that the President agreed to establish a Commission.

21. The terms of reference were not agreed with the applicants. The President believes that it would not be proper for him to agree terms with some parties who will participate in the Commission. He took into account and considered favourably terms suggested in the papers by applicants. The President determined the Terms of Reference within the powers granted to his office. The Terms of Reference are sufficiently broad to include the relief sought in prayer 6 in the Notice of Motion. I explain elsewhere why the President includes in the scope of the Commission, the matters in prayers 1, 2 and 3.

22. Despite agreement on the establishment of a Commission, applicants insist that the application proceeds on prayers 1, 2 and 3, at the same time that the Commission proceeds to make findings that impact on unlawfulness and constitutional damages.

23. Government and the President (supported by the other respondents) submit that proceeding with the application for prayers 1, 2 and 3, while the Commission will inquire into the matters relevant to prayers 1, 2 and 3 would be inappropriate, inconvenient and unfair. I explain why below (and above.)

24. In light of the applicants pressing with the application continuing in the face of the establishment of the Commission, the President and the Government seek a temporary postponement, alternatively a temporary stay of these proceedings pending a determination by the Commission.

The Relevant Legal Rules and their Application

Reinstatement of Withdrawn Notices of Opposition

25. In relation to the reinstatement relief, I am advised and submit that reinstatement should be permitted for the following reasons:

25.1 There is a satisfactory explanation of the circumstances in which the notices were withdrawn and the reason/s for reinstatement.

25.2 In summary, the notices were withdrawn because Government and the President intended to establish a Commission, which they believed is the overriding purpose of the application.

25.3 They believed that a Commission inquiring into the matters raised in all the prayers meant that opposition was not necessary.

25.4 Attempting to resolve the application in good faith by agreement, was unsuccessful.

25.5 When applicants insisted on persisting with the application for the relief claimed in prayers 1, 2 and 3, it became necessary to reinstate the withdrawn notices of opposition.

25.6 Reinstatement is not sought in bad faith. Government and the President informed applicants' representatives that if the application was not settled by the establishment of a Commission, then the notices would be reinstated.

25.7 The prejudice to the respondents were they not allowed to oppose the relief would be severe. They would be precluded from partaking in the

proceedings in a meaningful way.

25.8 Reinstatement will not prejudice the applicants. Any prejudice that may result by reinstatement can be compensated by a costs order. To date no prejudice has been claimed and in fact the applicants have indicated they will not oppose this relief.

26. The reason for reinstatement appears from what I say elsewhere in the affidavit. In addition, it is necessary to reinstate opposition because:

26.1 Currently, the facts relevant to interference and collusion (particularly relating to applicants' TRC cases) have not been established.

26.2 There is no concrete allegation of interference in any of the applicants' cases or the case of another person. As for collusion, there is no clear allegation of collusion. There are allegations of delay and failures to prosecute, but no allegation that these steps were not taken as a result of interference by a person.

26.3 The applicants sought the establishment of a Commission, "to expose the truth". The applicants pleaded that they "will accept nothing less than a fully transparent commission of inquiry armed with the normal powers of compulsion under the Commissions Act."

26.4 The basis for the applicants' demand for the establishment of a Commission appears in the letter attached as **FA 79** –

"The families of apartheid-era victims deserve nothing less than a fully open, public and transparent inquiry. This must include public hearings,

TM. [illegible]

the power to subpoena and compel the production of evidence and the right of victims to be represented in the commission and to lead evidence and put questions to witnesses. **Only a commission of inquiry can provide for such accountability**."

26.5 The founding affidavit makes it clear that applicants demand a Commission because they consider a Commission to be the most appropriate and effective way to get to the truth relating to interference and collusion, particularly in their cases or those of their families, and possibly in other cases not yet identified.

26.6 The relevant facts on interference and collusion in applicants' TRC cases are not in the founding affidavit. They cannot be established on the papers in motion proceedings.

26.7 All parties recognize that a Commission should inquire into allegations and establish the facts from which unlawfulness can be concluded.

26.8 Until the Commission has concluded its inquiry and made findings of fact, it would be inappropriate and improper to argue unlawfulness or constitutional damages in the application.

Postponement

27. I am advised and submit postponements are granted if this Court is satisfied that it would be in the interest of justice.

28. A postponement of the application for prayers 1, 2 and 3 would be in the interests of justice because:

The postponement application has been made timeously

28.1 The postponement application is made in terms of timeframes agreed between the parties. The postponement application was made to ensure the matter can be heard on the next available date that the Court can accommodate the parties.

28.2 This application was foreshadowed in correspondence and engagements during settlement. Early notice of this application was given.

28.3 The need for a postponement only arose after settlement of prayers 1 and 2 became deadlocked. That was towards the end of March 2025. At that time, applicants confirmed that they intended pursuing with the applications for the relief sought in prayers 1 and 2. After that, the parties agreed on a timeline for the filing of papers in this application.

28.4 The application has been launched before the establishment of the Commission. It is intended to publish the notice by the end of May 2025.

28.5 It has necessarily taken time to put together the terms of reference, find a judge and constitute the Commission.

28.6 I submit consequently, that substantial reasons have been furnished for the postponement.

No prejudice

28.7 As already submitted, the applicants cannot obtain substantial relief, particularly the relief sought in prayers 1 and 2 without the facts being

established.

28.8 That will be achieved at the Commission. Its purpose is to establish the facts. The purpose of an application, I am advised and submit, is not to establish the truth or the facts. Its purpose is to apply or decide the law on the agreed facts or the respondent's version. The Commission is better suited to establishing the truth or the facts. It would more effectively do that than an application on paper.

28.9 Applicants can and should participate fully in the inquiry at the Commission at which they may adduce oral evidence and cross-examine witnesses. There is little prospect, I am advised and submit, of a judge referring the application to oral evidence, or even to trial on interference and collusion. Particularly, when applicants have brought the application for the purpose of establishing a Commission.

28.10 Applicants retain a right to review the Commission or the President should he not implement the recommendations of the Commission, or to return to the application in the High Court.

28.11 The only possible prejudice is a delay in the finalisation of the application relating to prayers 1, 2 and 3. But the facts relevant to those matters will be established at the Commission. As I point out elsewhere in this affidavit, without those facts, the application cannot be decided.

Public Interest

28.12 The scope of the Commission is broader than that of the present application. It includes potentially all affected persons and similarly placed

TM. GM

persons who will attend and take part in the Commission. That would result in finalizing the allegations of interference and collusion in TRC investigations and prosecutions. Consequently, postponement is in the broader public interest.

29. I submit that a postponement will not result in an unreasonable delay of these proceedings because:

29.1 The President has provided for a Commission on shortened timeframes. The promulgation of the gazette to establish the Commission will take place before the end of May 2025. The Terms of Reference in the schedule to the Proclamation state that Commission must complete its work within 180 days from proclamation and submit its report within 60 days of the conclusion of its work

29.2 The intention is to prevent an unnecessary delay in the finalisation of the inquiry into the allegations of interference and collusion.

29.3 The applicants themselves do not believe that the work of such a Commission would take long.

29.4 In their request to the President and Government to appoint a Commission, the applicants write that:

"It will no doubt be argued that the country is suffering 'commission fatigue' and cannot afford yet another commission of inquiry, particularly after the State Capture Commission cost some R 1 billion. Such an argument is deeply insulting to the families who endured apartheid-era crimes. Their loved ones laid down their lives for our democracy and its enshrined freedoms. Not only has the post-apartheid state turned its back

on them and suppressed their cases, but in raising such an argument, it says they are not worthy of a rigorous public inquiry.

In any event the State Capture Commission cannot be compared to an inquiry into the suppression of TRC case. ***Unlike the State Capture Commission, there is an extremely limited set of witnesses and a very limited set of facts to explore. Whereas the State Capture Commission required years to complete its work, a commission into the suppression of the TRC cases could be wrapped up in a few months.***"

29.5 We do not yet know what that limited set of facts is. The Commission must inquire into and establish them.

29.6 I am advised and submit:

29.6.1 The constitutional damages sought in prayer 2, is dependent on a finding of a breach of a constitutional right.

29.6.2 Constitutional damages must be proportionate to the harm suffered.

29.6.3 Breach, harm and the proportionality of constitutional damages to harm, must be established from facts.

29.6.4 The Commission, rather than the opposed motion court, is the most appropriate forum for establishing those facts.

29.7 To make a finding in relation to constitutional damages, requires a finding

TM. CSN

whether a constitutional right has been breached, the extent of that breach and the circumstances within which the breach occurred.

29.8 The facts from which those findings must be made, will be established by the Commission.

Stay

30. I am advised and submit that the High Court has inherent regulatory powers to grant a stay provided that is in the interests of justice.

31. The interests of justice favour a stay because:

31.1 Real and substantial justice is not possible without the stay of the application until the Commission has produced its findings and recommendations.

31.2 The facts relevant to interference and collusion in the TRC cases of the applicants (or the TRC cases of other persons who may wish to join at the Commission) are unknown.

31.3 As I say above, all parties are agreed (or at least accept) that an independent Commission is best suited to inquiring into and establishing those facts, and ultimately helping to bring closure to affected persons and their families.

31.4 To run two parallel processes in different forums, would be:

31.4.1 inconvenient and unfair to parties and to the public interest that favours certainty and clarity over ambiguity and contradiction;

TM. 21 N/A

31.4.2 expensive and result in duplication and waste of costs.

32. I am advised and submit:

32.1 Our law avoids multiple proceedings to determine the same facts.

32.2 Findings by two forums on the same facts are undesirable.

32.3 Where one forum is the motion court, and the other a Commission with full power to investigate and inquire into the facts, it would be even more undesirable for both to make findings on the same facts.

32.4 It would be sensible and practical to stay the application to allow the Commission to complete its investigation and inquiry into interference, collusion and the appropriateness and fairness of constitutional damages, before the High Court is asked to make findings on unlawfulness or to award constitutional damages.

32.5 Consequently, a stay of the application, pending an outcome at the Commission, is justified.

GEOFREY MPHAPHULI

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at PRETORIA on this the 26 day of MAY 2025, the regulations contained in government notice no. R1258 of 21 July 1972, as amended, and government notice no. R1648 of 19 august 1977, as amended, having been compiled with.

SOUTH AFRICAN POLICE SERVICE
PRESIDENTIAL PROTECTION SERVICE
2025 -05- 26
PRESIDENTIAL PROTECTION SERVICE

COMMISSIONER OF OATHS

ANNEXURE TM3

ANNEXURE GM1

PROCLAMATION

by the

PRESIDENT of the REPUBLIC of SOUTH AFRICA

No. R. , 2025

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

In terms of section 84(2)(f) of the Constitution of the Republic of South Africa, 1996, I hereby appoint a Judicial Commission of Inquiry to investigate allegations of whether efforts or attempts were made to stop the investigation or prosecution of the Truth and Reconciliation Commission cases with the terms of reference in the Schedule attached hereto and appoint the Honourable Madam Justice S Khampepe as its Chairperson and the Honourable Mr Justice F D Kgomo and Adv A Gabriel, SC, as members of the Commission.

Given under my Hand and the Seal of the Republic of South Africa at ..... this ..... day of ..... Two thousand and twenty-five.

President

By Order of the President-in-Cabinet:

Minister of the Cabinet

TM NA

SCHEDULE

TERMS OF REFERENCE

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

A Judicial Commission of Inquiry ("the Commission") is hereby appointed in terms of section 84(2)(f) of the Constitution of the Republic of South Africa, 1996. The Commission is appointed to investigate matters of public and national interest concerning allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission ("TRC") cases.

1. The Commission must, in relation to the period since 2003, inquire into, make findings, report on and make recommendations concerning the following, guided by the Constitution, relevant legislation, policies and guidelines—
   - 1.1 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;
   - 1.2 whether any members of the South African Police Service or the National Prosecuting Authority improperly colluded with such attempts to influence or pressure them; and
   - 1.3 whether any action should be taken by any Organ of State, including possible further investigations to be conducted or prosecutions to be instituted, where appropriate, of persons who may have acted unlawfully by—
     - 1.3.1 attempting to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases; or
     - 1.3.2 members of the South African Police Service or the National Prosecuting Authority colluded with or succumbed to attempts to influence or pressure such members to stop investigating or prosecuting TRC cases; and
   - 1.4 whether, in terms of the law and fairness, the payment of any amount in constitutional damages to any person is appropriate.

2. Interested parties in the Commission, include the following parties:
   - 2.1 The parties in the application proceedings under North Gauteng Division of the High Court, Pretoria, in the case of *L B M Calata and 22 Others v the*

Government of the Republic of South Africa and 5 Others (case number 2025-005245); and

2.2 families of or victims in TRC cases, other than those applicants referred to in subparagraph 2.1, who have a substantial interest in the matter set out in paragraph 1, and who are admitted as parties in the Commission under the regulations that are made under the Commissions Act, 1947 (Act No. 8 of 1947).

3. These Terms of Reference may be added to, varied or amended by proclamation from time to time.

4. The Commissions Act, 1947, shall apply to the Commission, subject to such amendments, including amendments in relation to the Terms of Reference of the Commission, and exemptions as may be specified by proclamation from time to time.

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.

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

7. The Commission must—

7.1 complete its work within a period of 180 days from the date of this proclamation; and

7.2 submit its report to the President within 60 days after the date on which the Commission completed its work.

TM. DS NA

PROKLAMASIE

van die

PRESIDENT van die REPUBLIEK van SUID-AFRIKA

No. R. , 2025

REGTERLIKE KOMMISSIE VAN ONDERSOEK TEN EINDE ONDERSOEK IN TE STEL NA BEWERINGS VAN POGINGS WAT GEMAAK IS OM DIE ONDERSOEK OF VERVOLGING VAN DIE WAARHEIDS-EN-VERSOENINGSKOMMISSIE SAKE TE STOP

Ingevolge artikel 84(2)(f) van die Grondwet van die Republiek van Suid-Afrika, 1996, stel ek hierby 'n Regterlike Kommissie van Ondersoek aan ten einde ondersoek in te stel na bewerings van pogings wat gemaak is om die ondersoek na of vervolging van die Waarheids-en-Versoeningkommissie sake te stop, met die opdrag in die Bylae en stel ek hierby die Agbare Regter S Khampepe as Voorsitter en die Agbare Regter F D Kgomo en Adv A Gabriel, SC, as lede van die Kommissie, aan.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te ..... op hede die ..... dag van ..... Twee duisend vyf-en-twintig.

President

Op Las van die President-in-Kabinet:

Minister van die Kabinet

TM. NA
S.M

BYLAE

OPDRAG

VAN DIE

REGTERLIKE KOMMISSIE VAN ONDERSOEK TEN EINDE ONDERSOEK IN TE STEL NA BEWERINGS VAN POGINGS WAT GEMAAK IS OM DIE ONDERSOEK OF VERVOLGING VAN WAARHEIDS-EN-VERSOENINGSKOMMISSIE SAKE TE STOP

'n Regterlike Kommissie van Ondersoek ("die Kommissie") word hierby ingevolge artikel 84(2)(f) van die Grondwet van die Republiek van Suid-Afrika, 1996, aangestel. Die Kommissie word aangestel ten einde aangeleenthede van openbare en nasionale belang te ondersoek met betrekking tot bewerings van pogings wat gemaak is om die ondersoek of vervolging van Waarheids-en-Versoeningskommissie ("WVK") sake te stop.

1. Die Kommissie moet, met betrekking tot die tydperk sedert 2003, ondersoek instel na, bevindings maak, verslag doen oor en aanbevelings maak met betrekking tot die volgende, met inagneming van die Grondwet, toepaslike wetgewing, beleid en riglyne—

   1.1 of, hoekom, en die mate woortoe en deur wie, pogings aangewend is om invloed of druk te plaas op lede van die Suid-Afrikaanse Polisiediens of Nasionale Vervolgingsgesag om ondersoek of vervolging van WVK sake te stop;

   1.2 of, enige lede van die Suid-Afrikaanse Polisiediens of die Nasionale Vervolgingsgesag onbehoorlik met sodanige pogings om hulle te beïnvloed of druk op hulle te plaas, saamgewerk het; en

   1.3 of, enige stappe deur 'n Staatsorgaan geneem moet word, met inbegrip van moontlike verdere ondersoeke gedoen moet word of vervolgings ingestel moet word, waar toepaslik, of persone wat onregmatig mag opgetree het deur—

      1.3.1 gepoog het om invloed of druk op lede van die Suid-Afrikaanse Polisiediens of die Nasionale Vervolgingsgesag te plaas om die ondersoek of vervolging van WVK sake te stop; of

      1.3.2 lede van die Suid-Afrikaanse Polisiediens of die Nasionale Vervolgingsgesag saamgewerk het met of oorgegee het aan pogings om sodanige lede te beïnvloed of druk op hulle te plaas om die ondersoek of vervolging van WVK sake te stop; en

   1.4 of, ingevolge die reg en regverdigheid, die betaling van enige bedrag vir grondwetlike skade aan enige persoon na behore is.

TM DS NA

2. Belanghebbende partye in die Kommissie, met inbegrip van die volgende partye:

2.1 Die partye in die aansoek verrigtinge in die Noord-Gauteng Afdeling van die Hoë Hof, Pretoria, in die saak van *L B M Calata and 22 Others v the Government of the Republic of South Africa and 5 Others (saak nommer 2025-005245)*; en

2.2 families van of slagoffers in WVK sake, anders as daardie applikante in subparagraaf 2.1 bedoel, wat 'n substansiële belang in die aangeleentheid in paragraaf 1 uiteengesit het, en wat as partye in die Kommissie toegelaat is kragtens die regulasies wat kragtens die Kommissiewet, 1947 (Wet No. 8 van 1947), gemaak is.

3. Hierdie Opdrag kan, van tyd tot tyd, aangevul, verander of gewysig word by proklamasie.

4. Die Kommissiewet, 1947, is van toepassing op die Kommissie, behoudens sodanige wysigings met betrekking tot die Opdrag van die Kommissie, en vrystellings as wat, van tyd tot tyd, by proklamasie gespesifiseer word.

5. Regulasies kan gemaak word, na oorleg met die Voorsitter van die Kommissie, ingevolge die Kommissiewet, 1947, wat op die Kommissie van toepassing is, ten einde die Kommissie in staat te stel om sy werk behoorlik en effektief te kan doen en om die insamel van getuienis te vergemaklik deur om op die Kommissie die bevoegdhede op te lê as wat nodig mag wees, met inbegrip van die bevoegdheid om persele te betree en deursoek, die bywoning van getuies te verseker en om die oorlegging van dokumente te vereis.

6. Die Kommissie moet, waar toepaslik, enige aangeleentheid vir vervolging, verdere ondersoek of vir byeenroeping van 'n afsonderlike ondersoek, na die toepaslike wetstoepassingsagentskap, Staatsdepartement of reguleerder verwys.

7. Die Kommissie moet sy—

7.1 werk binne 180 dae vanaf die datum van hierdie proklamasie voltooi; en

7.2 verslag binne 60 dae nadat die Kommissie se werk voltooi is, aan die President oorhandig.

TM.

ANNEXURE GM2

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

THE PRESIDENCY

MENU

PRESIDENT RAMAPHOSA TO ESTABLISH COMMISSION OF INQUIRY INTO DELAY IN INVESTIGATION AND PROSECUTION OF TRC CASES

Wednesday, 30 April 2025

President Cyril Ramaphosa is in the process of establishing a Judicial Commission of Inquiry to establish whether attempts were made to prevent the investigation or prosecution of apartheid-era crimes referred by the Truth and Reconciliation Commission (TRC) to the National Prosecuting Authority.

Allegations of improper influence in delaying or hindering the investigation and prosecution of apartheid-era crimes have persisted from previous administrations. Through this Commission, President Ramaphosa is determined that the true facts be established and the matter brought to finality.

The establishment of the Commission of Inquiry is the outcome of settlement discussions in a court application brought by families of victims of apartheid-era crimes.

Following discussions involving The Presidency, the families and other Government bodies cited in the application, there was a joint agreement to establish the Commission.

This follows The Presidency's statement in February 2025 in support of a Commission that will look into the delays in the prosecution of these cases.

While the parties have agreed to the establishment of the Commission of Inquiry, they were not able to reach a settlement on other matters in the application.

These include the application for an order that declares the actions of various Government entities unlawful and a violation of the applicants' rights, as well as the payment of constitutional damages by the State.

Government has maintained that these outstanding matters would be most appropriately addressed through the Commission of Inquiry, and will therefore be included in the Commission's terms of reference.

President Ramaphosa continues to maintain that all affected families deserve closure and justice.

A Commission of Inquiry with broad and comprehensive terms of reference is an opportunity to establish the truth and provide guidance on appropriate remedies.

President Ramaphosa appreciates the anguish and frustration of the families of victims, who have fought for so many years for justice.

A Commission of Inquiry with broad and comprehensive terms of reference is an opportunity to establish the truth and provide guidance on appropriate remedies.

President Ramaphosa appreciates the anguish and frustration of the families of victims, who have fought for so many years for justice.

The President respects the decision of the families to continue to seek an order on the violation of their rights and constitutional damages through the courts.

Government will be seeking a stay of application on these outstanding matters pending the conclusion and outcomes of the Commission of Inquiry.

The Presidency will shortly make an announcement on the head of the Commission of Inquiry, the time frames and the full terms of reference.

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

Issued by: The Presidency
Pretoria

Justice Sisi Khampepe (2009-2021)

https://www.concourt.org.za/index.php/judges/current-judges/13-current-judges/78-justice-sisi-khampepe

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

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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 TVL (Northern Province)
1985 – Date: Member of the Black Lawyers Association
1987 : Association of Law Societies Community Organizations:
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

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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
1990 – 1995: Trade Unions' Fund Administrator of Federation International Des Employes
1993 – 1999: Executive Committee Member of Lesego women's club
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Frans Kgomo | Alumni

https://www.nwu.ac.za/frans-kgomo-alumni

Frans Diale Kgomo has presided over high-profile court cases that have broken new ground in upholding human rights and entrenching constitutional values since becoming Judge President of the Northern Cape.

Kgomo, who was born in Brits in the North-West Province, obtained an LLB degree from the University of Bophuthatswana (UNIBO) in 1985. He was admitted as an advocate in 1986 and practised at the North West Bar from 1986 to 1998. Moving through the ranks in court, he became a court interpreter in 1969, a prosecutor in 1972, district magistrate in 1974, regional magistrate after that and then acting judge and judge in 1998 before being appointed Judge President in 2001.

He gave judgment in landmark equality cases. These include the court case of a judge who fought for the right of her same-sex partner to benefit from her pension

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pay-out. Kgomo found sections of the enabling legislation unconstitutional and referred the case to the Constitutional Court, where the ruling was confirmed.

While presiding as a judge in the Pretoria High Court, he also made a judgment in another same-sex court case. In this case another judge successfully sought a court order declaring that lesbian couples might adopt children, giving them the same rights as heterosexual couples.

His high-profile cases have earned him international acclaim, one of the most recent and most prominent being the Griekwastad murder case. In 2014, he sentenced a 16-year-old to 20 years in jail after finding him guilty of murdering his family.

Kgomo added his expertise to various law-related associations and bodies. He was a member of the National Association of Democratic Lawyers from 1988 to 1998 and served as a member of Lawyers for Human Rights for 10 years from 1989 to 1998.

He has a keen interest in sport, especially soccer, rugby and cricket. He regularly plays tennis and pool.

MS ANDREA GABRIEL (SC)

https://static1.squarespace.com/static/5ad65f1d4cde7a89faf93458/t/63222f92e19ca92bc7ba79fb/1663184787163/Alpha+Group+Bios+%281%29.pdf

Andrea Gabriel SC completed her BA and LLB degrees at the former University of Natal, Durban, where she also worked for the Community Law Centre, part-time as a student and full-time after graduating. There her focus was on training and mentoring of paralegals from a wide range of communities in rural KZN. After completing her LLB in 1993, Ms Gabriel was awarded a Fulbright Scholarship to read for an LLM degree at Georgetown University, USA, where she focussed on constitutional law. This focus was driven by the impending entry of constitutionalism in South Africa in 1994. On returning to South Africa, Ms Gabriel was appointed a researcher to then Justice, later Chief Justice, Pius Langa

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at the newly formed South African Constitutional Court. This gave her the privilege of being among the initial set of 11 researchers appointed in the first years of the Constitutional Court. After working at the Constitutional Court, Ms Gabriel was awarded a further scholarship to read for an MPhil degree at the National Law School of India in Bangalore where she wrote her dissertation on socio-economic justice, while lecturing on constitutional law. Ms Gabriel commenced practice as an advocate at the Durban Bar in 1998. She was awarded the status of senior counsel in 2010. Ms Gabriel has had the privilege of appearing in in several important cases before the Constitutional Court and the Supreme Court of Appeal. She has a number of reported cases in the law reports which reflect her interest in the fields of public law, tax, environmental and property law as well as general commercial and civil litigation practice.

Over the years Ms Gabriel has been elected to positions within the KZN Society of Advocates, the General Council of the Bar and she is currently in her second term as Deputy Chair of the KZN Legal Practice Council. Ms Gabriel also sits regularly as an arbitrator in civil matters. Ms Gabriel, along with four of her female colleagues, established the Alpha Group in the middle of the Covid Pandemic and Lockdown in 2020. The group focusses on mentoring and training of young, women advocates at the Bar, while simultaneously keeping chamber and practice expenses as low as possible

In her non-legal time, Ms Gabriel has and continues to give her time as a Trustee on animal welfare and social public interest trusts. In her spare time, she enjoys soapmaking and giving and receiving love and affection to and from her seven pets.

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