

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

HELD AT:

Sci-Bono Discovery Centre, Corner of Miriam Makeba & Helen Joseph Street
Newtown, Johannesburg

BEFORE:

COMMISSIONERS:

The Honourable Ms Justice Sisi Khampepe (Judge Ret.) – Chairperson
The Honourable Mr Justice Frans Diale Kgomo (Judge President Ret.)

Adv Andrea Gabriel (SC)

EVIDENCE LEADERS:

Adv Ishmael Semanya (SC)

Adv Fana Nalane (SC)

Adv Mfesane Ka-Siboto

Adv Nompumelelo Seme

Ms Baitseng Rangata

REPRESENTATIVES

Ms Ntloko – NPA representative

Adv Gwala (SC) – NPA representative

Adv Gerrie Nel (SC) – AfriForum representative

Adv Varney (SC) – The Calata Group

Ms Judy Seidman (for Galela Reparations Movement)

Adv KD Moroka (SC) – DoJ representative

Adv Mpati Qofa-Lebakeng (for Adv Shaun Abrahams)

Mr Mongezi Ntanga (for Adv Shaun Abrahams)

Mr Moray Hathorn

Adv Tlotlego Tsagae (for Department of Justice)

Ms Chuma Bubu (for Helen Suzman Foundation)

Ms Judy Seidman (for Galela Reparations Movement)

Mr Shadrack Ganda (for Joe Xabi)

Adv Sokhela, Phumzile (for Former President Mbeki)

Mr Max Boqwana (for Former President Mbeki)

Mr Nkosinathi Thema

Adv Mpofu (SC) (for former President Zuma)

Adv Muvangua (SC) (for former President Mbeki)

11 FEBRUARY 2026

DAY 5

PAGES 197 – 291



MzanziSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289 Cell: 0794374335
E-mail: mzanzi3@telkomsa.net

PROCEEDINGS ON 16 JANUARY 2026

CHAIRPERSON: Good morning. Today we are going to hear the opening statements of the parties; and the first person to start will be Ms Ntloko for the NPA. Ms Ntloko, how long are you going to require?

MS NTLOKO: Good morning, Commissioner. I state that we require 30 minutes.

CHAIRPERSON: 30 minutes, yes. You may commence, madam.

MS NTLOKO: Thank you; if I may be given [indistinct] initially go
10 back. What was said to us was the commission and then the NPA.

FEMALE SPEAKER: Your voice is indistinct; if you have started speaking, can you pull the mic closer?

MS NTLOKO: Oh, my apologies. I was saying if I could be given a minute. I need to pull out the statement I had initially thought that what we were sent, which was the commission starts and then we come right after that.

MR SEMENYA: Chair, if it may be of any help, Mr Nel is ready to commence with his. Maybe we will alter the sequence a little.

CHAIRPERSON: Yes. Ms Ntloko is about to commence. Is it not
20 so, Ms Ntloko or should we pass you?

MS NTLOKO: Madam Commissioner, if Mr Nel is ready to begin, I will be happy for him to, because I am trying to download [indistinct].

CHAIRPERSON: Yes. Mr Nel?

ADV NEL: Thank you very much. I am indeed ready to proceed.

CHAIRPERSON: Yes. How many minutes are you going to require?

ADV NEL: 15 to 20.

CHAIRPERSON: Thank you.

ADV NEL: I am sure it is 15, but I give myself 20.

CHAIRPERSON: Thank you.

ADV NEL: Thank you very much. My colleague, Adv Phyllis Vorster and I, we represent the witnesses, Carl Martin Kriel, Jacob Gabriel Cilliers van der Merwe and Mr Andrew Gordon Leask. We do so on instruction of Hurter Spies Attorneys.

Dealing with Mr van der Merwe; Mr van der Merwe's evidence
10 will focus on the failure to investigate and prosecute the suspects [in
the murder of his father, Jacob Gabriel van der Merwe, who was shot
and killed on 1 November 1978. The suspect who clearly identified
and noticed the South African Police since December 1981 have
never applied for amnesty and the failure to prosecute the case has
allowed at least one of the suspects the opportunity to build a career
in the current government structures.

It is worth mentioning; we will pursue that although it appears
from an analysis of social media that the suspect is known to the
Head of the Missing Persons Task Team and the NPA, the body of
20 the deceased has never been recovered. Mr van der Merwe's mother
who testified before the TRC passed away without the privilege of
burying her husband.

We will argue that the only reasonable inference is that the
failure to prosecute was intentional. We hope to pursue what we
have been told of the expressed views of members of the NPA that

they will not pursue members of MK who fail to apply for or obtain amnesty.

Van der Merwe's evidence and that of Mr Kriel will implore the commission to ensure that the principle of equality before the law is restored by focusing not only on the failure to prosecute members of the armed forces, but also on all those who have failed to apply for or obtain amnesty; and that includes the so-called ANC 37.

Contrary to previous uninformed arguments before this commission, we hold no brief for anyone who have made themselves
10 guilty of crimes and has not obtained amnesty. We do not act for any implicated member of the former security forces.

Mr Kriel is the Chief Executive Officer of AfriForum, a non-profit civil rights organisation with approximately 300 000 members. His evidence will focus on the principle of equality before the law with an underlying plea to all parties to close the book of the past. This has been his and AfriForum's views since 2007 when he wrote a letter expressing his views to the then President Mbeki.

Mr Kriel's evidence is relevant, because it focuses on individuals who have either committed or audit crimes and implicated
20 individuals who were either unable to meet the requirements for amnesty or did not apply for amnesty at all. These individuals are known and the failure to properly investigate and prosecute them is deliberate and inexplicable.

We will represent Mr Andrew Leask, the former Chief Investigator of the Directorate of Special Operations, the DSO

Scorpions, as they were known, should the evidence leaders or any other party decide that his evidence is relevant and that he should testify. We have applied to the chairperson of the commission to exercise a discretion in terms of the provisions of section 7 of the rules to call Mr Kriel and Mr van der Merwe as witnesses.

We have, as was required, filed the affidavits, submitted the affidavits to the commission in November 2025 and they have been available since then. Our application under section 31 of the rules will be formalised; and that is to lead the evidence of our own witnesses
10 once we receive notice that our witnesses will be required to testify. That, Madam Chair, is my opening address.

CHAIRPERSON: Thank you, Mr Nel. Ms Ntloko?

MS NTLOKO: Thank you, Madam Chair and thank you for your indulgence. Together with my senior, Gwala SC, we appear for the National Prosecuting Authority. He sends his apologies. He is [indistinct] the Eastern Cape.

The National Prosecuting Authority appears before this commission as a constitutional institution established under section 179 of the Constitution entrusted with the power and duty to institute
20 criminal proceedings without fear, favour or prejudice. The NPA recognises that the effectiveness of this commission's mandate [indistinct] on a careful, fair and constitutional-grounded examination of prosecutorial decision-making within its proper and institutional context.

The National Prosecuting Authority further appears before this

commission in response to the serious allegations that are the subject matter of its mandate. It does so with the full appreciation of the gravity of the matters under inquiry, the profound public interest they engage and the enduring significance of accountability for crimes arising out of South Africa's past.

The NPA recognises that crimes arising from the TRC matters occupy a unique and sensitive place in South Africa's constitutional landscape. They engage not only commissions of criminal accountability, but also the unfinished business of historical injustices, the dignity of victims in [indistinct] and the integrity of the constitutional promise that gross violations of human rights will not be [indistinct].

These matters are inextricably linked to South Africa's democratic transition and its [indistinct] obligation, both in domestic and international law; to investigate, prosecute and remedy serious violations of fundamental rights. How they are approached as profound implications for society of healing, public confidence in the justice system and the credibility of constitutional institutions entrusted with giving practical effect to the values of accountability, responsiveness and openness.

At the heart of it, therefore, the NPA supports the commission's work and is of the view that the work must strike a careful and [indistinct] balance. It must advance the imperative of truth-seeking and accountability in a manner that is consistent with the constitutional guarantees, respects the separation of powers and

preserves the independence of prosecutorial and investigative institutions. In this context the NPA's engagement in this commission will be guided by its constitutional mandates to act without fear, favour or prejudice.

Following this brief introduction, the NPA will address the following in a structured manner. This is the roadmap. We will first deal with the terms of reference that we have been called here for. Secondly, the NPA will deal with its constitutional mandate very briefly and then we will provide the essential context of what the
10 evidence that they have put before this commission will indicate; and then clarify the position in relation to the former national directive in public prosecutors.

As the commission will know, the NPA has been divided in two teams with the current leadership being represented by myself and Gwala and the former NDPPs and other public prosecutors being represented by various law firms and advocates. And finally, the NPA will conclude with brief remarks directed at the proper framing of the commission's tasks.

Briefly to deal with the terms of reference: What we
20 understand the terms of reference to be is that the commission is temporarily confined to the [indistinct] from 2003 onwards and there are substantively directives to determine the following:

- Whether by whom and to what extent or attempts were made to influence or pressure members of the SAPS or the NPA to halt the investigation or prosecution of TRC-related matters.

- Whether any members of the SAPS or the NPA improperly eluded or succumb to such pressure.
- Whether unlawful conduct or [indistinct] warrant [indistinct] investigations or prosecutions by appropriate authorities; and whether, in terms of the law and fairness, the payment of constitutional damages to affected parties is appropriate.

And in that, with the scope of this mandate, the commission is carefully delineated. It is directed at specific allegations of alleged interference, pressure, collusion or unlawful influence. And it will be;
10 the NPA will be attending only to that which is within this mandate.

And now we move shortly to the NPA's mandate and the role in this constitutional democracy. As we all know and can appreciate, South Africa's constitutional democracy was not gifted. It was forged through systematic violence, repression and the deliberate dehumanisation of mostly black South Africans and South Africa as a whole whose lives, liberty and dignity were [indistinct] extinguished in service of an unjust political order.

Powerless men and women were detained, tortured, disappeared and killed. Many died unnamed, unrecorded. Their
20 family is denied both truth and justice. [Indistinct] and this is probably why we are here today.

So, it is against this historical background that the obligation to investigate and prosecute apartheid-era crimes must be understood. These are not ordinary crimes. They represent the most serious violations of human rights committed with the authority of the

state and often shielded the then state by it. Accountability for such crimes, while not discretionary, needs to be dealt with in a constitutional manner.

For this reason, the constitution vests the power to institute criminal proceedings exclusively to the NPA. That power is exercised on behalf of the people of South Africa, not private interests, not political [indistinct] and not sectional [indistinct]. It is entrusted to a single independent prosecuting authority precisely because history has taught us the catastrophic consequences that follow when
10 prosecutorial powers is fragmented and given to private entities.

And therefore, the National Prosecuting Authority will at all times be acting within its mandate and has been acting within its mandate under section 179 of the Constitution. In order to curtail time, we will upload the rest of the opening statements, but I will now move briefly to deal with the evidence that will be placed before this commission by the NPA.

The evidence that will be placed by the National Prosecuting Authority will demonstrate that there has been a sustained structure and constitutionally compliant efforts to investigate and prosecute
20 matters emanating from the TRC, particularly over the past decade. In this instance I wish to point out that the NPA has not and it does not accept or reject that there has been political interference in the investigation of prosecutions of TRC-related matters. That is [indistinct] matter to be determined based on the evidence that will come up; and therefore, there is no concession or denial in that

regard.

At the same time, the current leadership – and I say current because of the delineations of what was indicated earlier about who represents who within the bigger scheme of the NPA; has no direct knowledge of any political interference, pressure or collusion in relation to the TRC cases during its tenure. And when I say current, I also mean just the former at this particular point in time, as we are aware there is a new [indistinct].

The evidence that will be placed before the commission, therefore, by the NPA will therefore be confined to matters within its institutional knowledge, [indistinct] and experiences, particularly over the past six years. That evidence will demonstrate how prosecutorial decisions were made during this period, the safeguards that were in place and the absence of any improper influence on those decisions. And we wish to point out where courts have previously made any findings in relation to TRC matters, those findings shall speak for themselves. The NPA shall not seek to review them in these proceedings, nor seek to go back and forth in relation to them.

The evidence will demonstrate further that since 2019, which is when the former NDPP to date; the NPA has undertaken deliberate structure and sustained measures to address matters emanating from the TRC processes within the confines of the constitution, the NPA acts, binding policies and budgets.

First the evidence will show that; well, we can accept that there has been some delay in certain matters. Those have not been

deliberate. There have been issues in relation to resources; and, as we know, we are in South Africa. The coffers are not deep and therefore it is not just a money issue. There is also a human resource aspect.

Second, the evidence will show that TRC cases presenting weak and exceptional prosecutorial difficulties, these matters concern [indistinct] several decades of work, frequently in circumstances marked by deliberate concealment, destruction of records and systematic obstruction and not by the current government.

10 In many instances original police dockets, inquest records, post-mortem reports and forensic exhibits were destroyed, lost or never properly created. Witnesses and suspects have aged, relocated or passed away. In some matters even the basic factual building blocks still require investigation, dates, location, identities. Causes of death are incomplete or contested. The evidence will show that these realities impose severe evidentiary limitation that no prosecuting authority acting lawfully, reasonable can simply overcome by [indistinct].

20 And thirdly, the evidence will demonstrate the challenges over the years, as the commission will understand as the evidence is given. The NPA does not act on its own. There are other peers, including the SAPS, the DPCI and therefore there has been issues therein in relation to investigations of law and we will delve more when the witnesses are put on the stand on what it takes to in fact go through a successful prosecution.

And finally, the evidence will also show that there has been a commitment on the NPA to prosecute these matters and further show that the NPA did not treat victim engagements as a peripheral issue. The evidence will show that there has been regular engagements which have been held with families, civil societies and legal representations. Prosecutors and investigators have been directed to communicate progress, explain delays and account for decisions; and this has been done.

And therefore, well, the allegations of political interference
10 may not be ignored. They will need to be addressed within the context. What was the decision? What was the rationale behind any particular decision, because as we all know, a decision on its own does not in its own mean that there is interference? And because of that, we will show that there has been matters that have progressed far beyond what may be believed in the public eye.

We will show that matters presently on the [indistinct] include the causes for prosecution, the Simelane prosecutions, interlocutory issues, such as the section 77(3) processes have delayed finalisation. And we will also show that there has been other matters that have
20 equally been progressed and such matters beyond the matters that we are dealing with in this particular commission that have been highlighted by what we have come to know as the [indistinct]. The particular inquest into the death of Stephen Bantu Biko have been opened. The reopening of the inquest of the death of Mr Griffiths Mxenge has equally been opened and others, like Mzwandile

[indistinct], Sandiso Yeso, Samora Mpendulo, Sadat Mpendulo and Thando Mthembu having reopened; and these are just a few.

I wish to highlight at this point that there are certain matters that we cannot divulge at this commission, because the sensitivities around the investigations are quite high; and therefore, to deal and to enter the fray in those matters might in actual fact do more harm rather than good.

And then just to deal briefly with the position of former NDPPs, because you have heard me saying the current NPA, the current
10 NPA. The former NDPPs and NDPPs and other officials of the NPA are legally represented. So the commission will get a full account from 2000 all the way to currently, but every single NDPP will be doing that for its tenure and we can appreciate institutional account is required. Institutions do not run themselves. And because of that, there is particular knowledge that particular NDPPs former officials would have that the current leadership would have.

And therefore in closing, I want to confirm and affirm that the NPA will fully participate in good faith in these proceedings and at all points in time will participate within the scope of its mandate, the
20 scope of this commission and all lawful requirements that are required from it.

And therefore in closing, the NPA respectfully urges the commission to, well, we accept the hardships that many families are experiencing for the matters, while delicate, to be dealt with in a manner that requires accountability and in a manner that is fair to all

parties.

After all, we can appreciate investigations and decisions to prosecute or not to prosecute and not approach [indistinct]. They are approached with utmost care. Decisions that may seem to others as unfair need to be interrogated and put into a proper context. Such decisions to prosecute or not prosecute carry profound and lasting consequences; not only for victims and witnesses, but also for the accused persons and their families.

In exercising that responsibility, it should be kept in mind that
10 the National Prosecuting Authority acts within its constitutional mandate which requires it to act without fear, favour or prejudice; and that means there are times where particular matters cannot [indistinct] to prosecution because of particular reasons and it is in this commission that those reasons will then be dealt with; and we hope in dealing with those reasons every party dealing with whether it is the prosecution policy, which we know has been at the heart of these allegations, what went into that prosecution policy, why was it actually implemented, what were the reasons.

Therefore, what the NPA is saying; well, we can accept that
20 there has been delays. Context is always going to be essential.
Thank you.

CHAIRPERSON: Thank you, Ms Ntloko for that opening statement.
We shall now receive the opening statement of Mr Varney.

ADV VARNEY: As the commission pleases.

CHAIRPERSON: How many minutes are you going to require, Mr

Varney?

ADV VARNEY: Madam Chair, our opening statement is a little bit more comprehensive and we would seek around 45 minutes.

CHAIRPERSON: 55 minutes. Yes, you may proceed, Mr Varney.

ADV VARNEY: Madam Chair, commissioners, I appear with my learned friend, Samantha Pillay, instructed by the Pro Bono Department of Webber Wentzel. Before I proceed, with the leave of the commission, may I hand up copies of our opening statement for you to follow?

10 CHAIRPERSON: Yes, you may.

ADV VARNEY: We will also email electronic versions to the commission and the parties. Commissioners, our opening statement is made on behalf of the following families and individuals:

- Lukhanyo Bruce Matthews Calata – representing the family of the late Fort Calata on the Cradock Four activists abducted and murdered near Port Elizabeth in 1985.
- Nombu Mhlauli – representing the family of the late Sicelo Mhlauli, one of the Cradock Four.
- Sindi Elizabeth Mkonto – representing the family of the late Sparrow Mkonto, one of the Cradock Four.
- Alegria Nyoka – representing the family of the late Caiphus Nyoka murdered by the police in Daveyton in 1987.
- Bonakele Jacobs – representing the family of the late Dicky Jacobs who died in security detention in the Upington Prison in 1986.

- Fatiema Haron-Masoet – representing the family of the late Imam Haron, tortured and killed in security detention in Cape Town in 1969.
- Tryphina Mokgatle – representing the four families of the Cosas Four, three of whom were murdered by the Security Branch in 1982 and one seriously injured who died in recent years.
- The [indistinct] for Zandisile Musi
- Eustice Bimbo Madikela
- Ntshingo Matabane
- 10 - Fanyana Nhlapo.

Then we turn to Karl Andrew Weber, a survivor of the Highgate Hotel Massacre in East London on 1 May 1993.

- Lyndene Page – sister of the late Deon Harris who was also killed in the Highgate Hotel Massacre in May '93 as well as Neville Beling, a survivor of the Highgate Hotel Massacre.
- Mbuso Khoza – representing the family of Sbhho Phewa who was forcibly disappeared by the Security Branch near Winkelspruit in 1987.
- Thuli Kubheka – representing the family of Ntombi Priscilla Kubheka, who was also forcibly disappeared by the Security Branch in 1987 near Winkelspruit on the South Coast of KwaZulu-Natal.
- 20 - Kim Turner – representing the family of the late Dr Rick Turner murdered at his Durban home in 1978. Dr Turner died in the arms of Kim and her sister, Joan, while they were teenagers at

the time.

- Sarah Bibi Lall – representing the family of the late Dr Hoosen Haffejee, tortured and murdered at Durban’s Brighton Police Station in 1977.
- Sizakele Ernestina Simelane – representing the family of the late Nokuthula Simelane, who was abducted, tortured and forcibly disappeared by the Security Branch in 1983.
- Stephans Mbuti Mabelane – representing the family of the late Matthews Mojo Mabelane who died in security detention at
10 Johannesburg’s John Vorster Square in 1977.
- Hlekani Edith Rikhotso – representing the family of Ignatius Iggy Mthebule, who was forcibly disappeared in 1987.
- Tshidiso Motasi – representing the family of the late Richard and Busisiwe Irene Motasi murdered by the police at their home in Hammanskraal in 1987.

Madam Chair, our client Tshidiso [indistinct] at the time, he was left overnight with the bodies. That murder took place in his presence.

- Nomali Rita Galela – representing the family of the late Twasile Champion Galela, one of the PEBCO 3 activists, abducted,
20 tortured and murdered by the Security Branch at Post Chalmers in 1985.
- Phumeza Mandisa Hashe – representing the family of the late Siphon Hashe, one of the PEBCO 3.
- Mkhonto Godolozzi – representing the family of the late Qaqawuli Godolozzi, one of the PEBCO 3.

- Mogapi Solomon Tlhapi – representing the family of Nicholas Ramatua Boiki Tlhapi, who was forcibly disappeared in 1986.

And lastly, we also represent the Foundation for Human Rights, a non-profit organisation in pursuit of justice and the rule of law and acting in the public interest.

We collectively refer to the survivors and family members as 'the families'. Madam Chair, commissioners, on 25 March 1965 Martin Luther King delivered a speech on the steps of the Alabama State Capitol in Montgomery after leading 8 000 civil rights marchers
10 from Selma to the state capital. Martin Luther King asked: "How long will justice be crucified and truth bear it?" He answered: "Not long, because the arc of the moral universe is long, but it bends towards justice."

For the families the arc of the moral universe has indeed been long, multiple decades long. They believe that in the post-apartheid order the arc would bend firmly towards justice. Regrettably for most of the families, the arc of the moral universe has been firmly deflected from justice. Most will never see justice done in their cases.

It emerged over the years that the failure to pursue justice in
20 their cases was no accident or oversight. It was not, as a senior ANC official claimed on an international TV show, a matter of the TRC cases simply falling through the cracks.

In fact, various high level interventions ensured that these cases were to be treated differently from other cases, other murders, other serious crimes. They were to be treated as second class cases

not worthy of attention in the normal course.

These interventions undermined, eroded and ultimately stopped most of the TRC cases from proceeding at crucial times when suspects were alive and witnesses were available. Interference caused the families and their communities incalculable and irreversible harm and prejudice. They deserve to know how and why this happened. Madam Chair, they deserve nothing less than a reckoning.

10 It is for this reason that the family spent more than six years asking President Ramaphosa for an inquiry; and when he ignored their pleas, they were forced to approach the high court in January of 2025, seeking constitutional damages and an order compelling him to set up a commission. Only then did the president act, establishing this, the TRC Cases Commission Inquiry. The families ask, with considerable justification, why did they have to go to court to get the president to act.

20 Turning now to the betrayal: The families had to endure violence, murders and disappearances perpetrated against themselves and their loved ones during apartheid. In the post-apartheid era, they had to endure the denial of justice. This denial cut the deepest. It stands as a deep betrayal.

The families are at their wits' end as to why the successive post-apartheid governments turned their backs, not only on them, but also on their loved ones who paid the ultimate price for South Africa's freedom and democracy.

The sacrifices of the families and their long fight for justice have defined them and their life choices. They have spent decades searching for the truth and struggling to do justice to the lives of their loved ones, which were so brutally cut short. They have done so in the face of the intransigence of the post-apartheid state, which has misled them and treated them with contempt.

In this regard, the commission is expected to hear from Lukhanyo Calata, the son of Fort Calata, one of the Cradock Four, and Thembi Simelane, the sister of Nokuthula Simelane, who was
10 abducted, tortured and murdered by the Security Police.

Supporting affidavits of 21 other family members providing their stories and their struggles have been supplied to the commission, but for most of the families it is too late. Their life-long struggle for truth and accountability has come to naught. Suspects and witnesses have died, bringing an end to any prospect of prosecution in most of these cases. These cases can never be resurrected. The damage has been done. Most perpetrators have died without facing justice.

We have attached to these submissions to this opening
20 statement a list of some 30 suspects in apartheid-era crimes who have died since the winding up of the TRC, some in recent years. We will not go through that list, but we invite you to study it.

And family members have also passed on. These include:

- Saroma Nyoka, mother of Caiphus Nyoka, murdered by the police in his bedroom in 1987. She died in June 2010.

- Yusuf Haffejee, brother of Dr Hoosen Haffejee, who died under Security Branch interrogation in 1977. Yusuf died in 2009. He led the attempts to investigate his brother's death in detention. Hoosen's mother, Fathima, died in 2011.
- The son of Champion Galela, one of the PEBCO 3, Tebogo, died in 1996 and another son, Lehlohonolo, died in 2011.
- On 29 September 2019, exactly 50 years after her late husband, Imam Haron, was buried, Galiema Haron died at the age of 93. She did not see anyone punished for her husband's torture and death in detention.
- 10 - Phillip Mabelane, father of Matthews Mabelane, who died in Security Police detention at John Vorster Square in 1977. The police claimed he jumped out of the 10th floor, interrogation room of John Vorster Square. Phillip died in May of 2018. On August 2020 Lasch Mabelane, Matthews' brother, passed away without reaching closure.
- Jame Tlhapi, the father of Boiki Tlhapi, who forcibly disappeared from Security Police detention, died in September 2020.
- On 28 June 2021 Zandisile Musi, the only survivor of the Cosas
20 Four entrapment killing, died without seeing justice.
- On 20 August 2020, Nyameka Goniwe, wife of Matthew Goniwe, passed away. Matthew's daughter, Nobuzwe, died on 22 July 2024 at the age of 49. They died before seeing justice done in Matthew's brutal murder.
- Neville Harris, father of Deon Harris, who was one of the five

murdered during the Highgate Hotel Massacre, died in July 2023 without closure.

- On 2 June 2005, Lucia Mthebule, the mother of Iggy Mthebule, a former MK operative who disappeared in 1987 in the hands of the Security Bran

Madam Chair, there are many more examples. It is not surprising that apartheid-era perpetrators, witnesses and family members are rapidly dying off, given that most of the offences took place between the 1950's and 1980's. Most perpetrators were born
10 between the 1930's and 1950's. They are typically in their 70's, 80's or even older. It is a race against time, but we have seen little or no urgency on the part of the authorities, a situation what, we would submit, sadly prevails until today.

Madam Chair, the cruel indifference of the post-apartheid state robbed the families of justice, peace and closure. The damage done to the families and their communities is irreparable. They remain deeply scarred today.

Turning to the compact with the nation: South Africa's ground-breaking transition required a limitation of the fundamental rights of
20 the victims of gross human rights violations. And as we are all aware, this was justified by the pressing need to promote national unity and recollection and to cross the historic bridge between the past of a deeply-divided society to a future founded on democracy, equality and peaceful co-existence.

The principles set out in the postscript to the Interim

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

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

The TRC's final report released on March 2003 stressed that amnesty should not be seen as promoting impunity. The TRC highlighted the imperative need for a bold prosecution policy in cases not amnestied to avoid any suggestion of impunity or of South Africa contravening its obligations in terms of international law.

Most victims accepted the necessary and harsh compromises
20 that had to be made to cross the historic bridge from apartheid to democracy. They did so on the basis that there would be a genuine follow-up on those offenders who spurned the process and those who refused amnesty.

Now this part of South Africa's historic pledge has not been kept. Contrary to this obligation, in the aftermath of the TRC, the

state chose ultimately to abandon its obligations by undermining or blocking the TRC cases.

Over the years, families of apartheid-era victims conducted themselves with resilience and remarkable patience. They committed themselves to historic compromises that were required to move from South Africa's oppressive past to a democratic future. They participated in the TRC process in good faith. This involved having to accept that perpetrators granted amnesty would not face prosecution or civil damages claims.

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

 According to the TRC report, read with figures released by the Department of justice, of the 7 112 persons who applied for amnesty, relating to some 14 000 incidents, just over 5 000 were rejected on the papers – that is in chambers – for not meeting the basic
20 requirements for amnesty, while the balance were referred to hearings before the Amnesty Committee.

 Some 849 of these applicants were granted amnesty while approximately 358 applications were refused. Murders comprised the biggest category of the crimes for which amnesty was refused, notably some 189 cases, which involved at least 353 deaths.

Now the families did not expect the apartheid police to investigate themselves or other security services. In those days, Madam Chair, it is hardly worth mentioning that they acted entirely without restraint and without the slightest fear of having to face justice. Compliant investigating officers, prosecutors and magistrates ensured that apartheid security forces enjoyed near total impunity.

However, the families did expect the post-apartheid state to pursue justice, but a near blanket impunity for apartheid-era crimes was effectively extended into the post-apartheid era through the
10 meddling by the state in these cases.

Now let us turn to the apartheid-era violations. The Constitutional Court has held in the Basson matter that the practise of apartheid constituted a crime against humanity and that South Africa is obliged to prosecute apartheid-era crimes against humanity and war crimes.

There is ample evidence in the public domain substantiating the conclusion that South Africa's pre-1994 order amounted to an institutionalised regime of systematic oppression and domination by the white racial group over the black racial group. That, Madam
20 Chair, is the definition of the crime of apartheid in the Rome Statute, which has also been incorporated into South African law by our International Criminal Court Implementation Act.

On this score, Madam Chair, we do have some small good news, because only last year in the matter of *S v Mfalapitsa & Rorich*. The citation is at footnote 18. In that matter the high court dismissed

objections raised by the two accused against the inclusion of two counts of crime against humanity, apartheid as a crime against humanity and murder as a crime against humanity. And the Court in that matter upheld the inclusion of those charges in the indictment. So that is a significant step forward. I should add that that judgment is currently on appeal before the Supreme Court of Appeal.

Now the TRC found that very serious crimes were committed during the apartheid era, which report found that the Security Branch of the apartheid state as well as other security services committed a
10 host of gross violations of human rights, including extra-judicial killings, the desecration and mutilation of body parts; kidnappings and disappearances; torture, severe ill-treatment, abuse and harassment; destruction of homes or offices through arson, bombings or sabotage; the manipulation of society by turning groups against each other, resulting in violent clashes; the creation and provision of support hit squads for deployment against opponents of the government; and tens and thousands of anti-apartheid activists were detained without charge or trial or acted against under security laws.

The TRC concluded that the security forces were a law unto
20 themselves. The vast majority of murders and crimes carried out by them were covered up. Thousands of political activists were tried, convicted and punished. According to the very useful website, South African History Online, some 1 300 political prisoners served time on Robben Island. The total number of political prisoners held at all prisons would run into several thousand. Virtually all prosecutions

that were brought were brought against those opposing apartheid.

Madam Chair, let us turn to the burning question, the subject matter of this inquiry; the political interference. Now on behalf of the families, we intend to demonstrate that systemic steps were taken by members of the executive to close down or impede the TRC cases from being taken forward. We will argue that but for these steps, it is highly probable that from 2003 several cases would have been investigated and some prosecuted.

10 There were early attempts to secure justice for apartheid-era crimes in the 1990's, post '94. These were carried out in an *ad hoc* manner by different investigations. I am not going to take the commission through them. They are set out in the papers and we have footnoted the references, but these cannot be referred to as the 'TRC cases', as they were pursued independently of the TRC around the same time of its operations. Notably, these cases, such as the prosecution of former Vlakplaas Commander, Eugene de Kock, took place before steps were taken to close down the investigations.

20 If we turn to the question of delivery: In terms of post-TRC delivery the record is dismal. This stark fact is not seriously disputed by anyone. Since the handover of the TRC cases to the NPA some 25 years ago, the record as at the filing of the Calata papers in January 2025 amounted to:

- Six concluded reopened inquests that occurred between 2017 and 2025. That is early 2025.
- Four plea and sentence agreements; and these all appeared

between 16 and 21 years ago.

- Two concluded criminal trials, one some 18 years ago of Transkei police officials and the other in 2023, resulting in the conviction and imprisonment of a gang member.
- In the Caiphus Nyoka murder case, one accused entered a guilty plea and was convicted in November 2024 and sentenced in July 2025. There has been a development in the Nyoka case in December last year in the Johannesburg High Court, convicted two more apartheid-era police officers, Sergeant Engelbrecht and
10 Sergeant Stander while one other was acquitted.

We have set out a more detailed account of this work or the lack thereof in the Calata Family affidavit which is before this commission. From the perspective of the families, this failure is largely due to institutional interventions on the part of the then executive.

Now contrast to this view, the former members of the executive appear to be saying that the lapses are not of an institutional nature, but rather due to the failures of the Prosecuting Authority and the South African Police Services themselves; or alternatively, they seem to be saying that the neglect visited on these
20 cases can be attributed to individual prosecutors and police officers. We disagreed with this contention and it is one of the key questions that this commission will have to interrogate.

And let us commence with what might have been the genesis of the interventions or the interference; and these were discussions between representatives of the old and new orders. Now it appears

that between approximately 1998 and 2002 there were meetings and interactions between police and military generals and senior ANC or government officials.

Madam Chair, if I may pause here; we find it astonishing with the president, the current president saw fit to limit the investigations of this commission to what transpired from 2003. That, we would submit, is perhaps a blunder that was done out of ignorance of the facts, but we would suggest that as a matter of necessity, the commission has to investigate the context and the genesis of the
10 interference; and so we would urge the commission to interpret its mandate purposively and not literally.

So where there are events and developments in earlier years that in form or directly led to the interference that occurred from 2003 onwards, that we [indistinct] by logical deduction. They must also be fully investigated, because if you do not, you can hardly be placed into a proper position to address what took place from 2003.

Now the information at our disposal points to several prominent persons attending one or more of these meetings, which occurred between 1998 and 2003. So from the side of the old orders,
20 it appears that attendees at the meetings included from time to time: FW de Klerk, Magnus Malan, Constand Viljoen, former Police Commissioner Johann van der Merwe, Generals Jan Geldenhuys, Dirk Marais, Niell Knobel, amongst others. And from the side of the new order, attendees appear to include Thabo Mbeki, Jacob Zuma and various security cluster cabinet ministers. Again, these are set

out in the papers.

Now it appeared that the generals, representing the former apartheid security apparatus, were seeking protection against prosecution, either in the form of a general indemnity or other forms of protection. Now news of these interactions emerged from interviews conducted by authors Ole Bubenzer in 2006 and Michael Schmidt in 2019 and 2020. Extracts from their books have been supplied to the commission and both authors are expected to testify in the first sitting of the commission's hearings.

10 Before FW de Klerk died, his foundation, the FW de Klerk Foundation, on 5 July 2021 released an editorial titled *The NPA's Decision to Prosecute Apartheid Era Crimes*. The editorial referred to an informal agreement not to prosecute apartheid-era crimes; and I quote from that editorial.

“Because of an informal agreement between the ANC leadership and former operatives of the pre-1994 government, the NPA suspended its prosecutions of apartheid-era crimes.”

20 This statement points to the fact that there was some kind of informal agreement, arrangement or understanding in place between the old and new orders on the question of prosecutions. An overview of these interactions, as gleaned from the books by Bubenzer and Schmidt, are set out in the papers provided. It appeared that there was consensus amongst all or most involved that something needed to be done to address the impending prosecutions.

Now a blanket amnesty was apparently rejected by the ANC government because of the constitutional implications, but it does appear that other options were explored, including the preparation of draft legislation for the creation of a new kind of special plea in criminal procedure, based on the TRC's amnesty criteria. Now this did not see the light of day, but its essential ideas emerged later in the Prosecution Policy amendments.

So the generals were not awarded with a blanket amnesty or any type of immunity that they sought, but the scene was set for
10 subsequent developments that occurred from 2003 and which largely, in our view, provided the outcome sought by the generals.

Turning to the handover of cases from the TRC to the NPA: During the winding up of the TRC between October '98 and September 2000, lists of cases involving serious crimes where amnesty had been refused or not applied for were handed over to the NPA. The exact number of cases is not known, but the Priority Crimes Litigation Unit, which was ultimately charged with dealing with these cases, the PCLU, registered some 459 cases during 2003; and that is gleaned from the NPA annual report for that year. These
20 different steps are set out in the Calata affidavit.

Commissioners, we expect to hear from former TRC commissioners, Yasmin Sooka and Dumisa Ntsebeza SC in this regard as well as TRC staffer, Adv Paddy Prior. On the side of those receiving the lists, we also expect to hear from the former NDPP, Adv Bulelani Ngcuka and Judge Vincent Saldanha, the former head of the

NPA's Human Rights Investigation Unit. I should say that we do have statements already from Adv Paddy Prior as well as Judge Vincent Saldanha.

Preliminary work on the TRC cases were commenced by the HRIU which had been established by Mphephu for this purpose and then subsequently by the Special National Projects Unit, the SNPU under Adv Chris MacAdam. And that was located in the Directorate of Special Operations, the DSO also known as the Scorpions.

10 In May 2003 Mphephu decided that all TRC related cases in which amnesty had not been granted were to be prioritised. They were ironically declared to be priority crimes in terms of the PSCA new proclamation. The irony of course is given what transpired thereafter, equality Adv Anton Ackerman SC head of the PCOU was resulted in more than 400 investigation dockets being transferred to the PCOU.

20 Shortly thereafter Ackerman and MacAdam started to identify and prioritise cases for prosecution. However, before they could get going, outside interventions brought a halt to their plans, they could only proceed with a handful of matters in which investigations had been previously finalised.

Now turning to evidence pointing to interference, Madam Chair, there is too much to go through to include in an opening statement, so we will confine ourselves to a high level summary, but we have set out detailed accounts in the Calata papers, as well as many other affidavits we have already submitted.

When families have compiled evidence and information pointing to various steps that we submit resulted in the closing down of the TRC cases. In this regard the commission is expected to hear the testimony of former NDPP Adv Vusi Picoli, Adv Ackerman and Chris MacAdam as well as Adv Sanders from Martha[?] SC.

Let us turn to the first significant step that put the writing on the wall for the TRC cases and this was the refusal to provide the PCOU with investigation officers and this was the first practical intervention, the refusal of both the DSO and the SAPS to assign
10 investigating officers to the TRC cases in 2003.

And this was notwithstanding much pleading and ...[indistinct] terms on the part of Ackerman and MacAdam to secure investigators. The SAPS indicated that they would only investigate TRC cases if the President specifically instructed them to do so, in writing.

Such instruction was never forthcoming and the state of affairs persisted until 2010 when an investigating officer was assigned for the TRC cases, but he made little or no progress. As a result there were practically no investigations at a time when many
20 suspects and witnesses were still alive and evidence and leads were reasonably fresh.

Let us now turn to another significant step and that was the creation of the Amnesty Task Team, the ATT. This body was created by the Director General's forum, the DG forum in early 2004 to explore ways of accommodating perpetrators who have not amnesty.

The ATT included representatives from the Department of Justice, National Intelligence Agency, SAPS, the NPA and Department of Defence.

It created an interdepartmental task team which included a representative from the office of the President and acted under the direct supervision of the inter-ministerial committee. I should say that astonishingly the ministerial security cluster committee created ministerial team devoted to the TRC cases. This was a subcommittee of the Justice Crime Prevention and Security cluster; it
10 was called the Cabinet Committee on post TRC matters. And one may ask, what is a cabinet doing when it sets up a committee to look at a certain class of cases that are meant to be prosecuted.

Now the interdepartmental committee was to consider the advisability of a prosecution in each case and make a recommendation to the DG committee who in turn would advise the NDPP. The ATT in fact prepared a draft indemnity bill, we have not been able to lay our hands on that bill as yet and we hope that this commission would be able to do so.

And it made various other recommendations on the use of
20 prosecutorial discretion and pardons to avoid prosecutions. It even explored ways of eliminating private prosecution and civil litigation in respect of the TRC cases. The ATT recommended that all involved, including the NDPP take the national interest into account when making decisions on the TRC cases. I am sure we can have an interesting debate on what was meant by the national interest.

Let us turn to the moratorium on investigations and prosecutions. During 2003 an effective moratorium was placed on the pursuit of the TRC cases and this moratorium came into effect more formally the following year in November 2004 after Justice Minister Bridget Mabandla[?] instructed acting NDPP Adv Silas Ramartha[?] SC to suspend work on the TRC cases pending the issuing of guidelines for the matters.

Now this occurred after an attempt by Anton Ackerman and his team at the PCOU to execute arrest warrants against suspects in
10 the attempted murder of the Reverend Frank Chikane[?]. These attempts were blocked after steps were taken by the suspect's attorney, the late Deon Wagenaar who unbelievably secured the intervention of the Ministry of Justice.

Now the Ministry of Justice communicated with the NPA, with Ackerman himself and later the minister picked up the phone and spoke directly with the acting NDPP, Adv Ramartha[?]. Now Ramartha, according to the statement, advised the minister that her plans encroached on prosecutorial decision making and violated prosecutorial independence.

20 Ramartha holds the view that the imposition of the moratorium by the executive and the development on guidelines by members of the executive to deal with the TRC cases were unconstitutional and forms a political interference. Needless to say, victims, survivors and families were not consulted before their cases were placed on ice. The application of law was effectively suspended

at that time for the TRC cases.

Let us now turn to the infamous amendments to the Prosecution Policy. New guidelines where the amendment to the Prosecution Policy which has featured before this commission already and they were only issued in December 2005. The amendments, frankly put, were aimed at shielding apartheid era perpetrators from prosecution.

They inserted the TRC amnesty criteria as new grounds to decline to prosecute and added other novel reasons not to prosecute, such as the degree of indoctrination that an offender might have been subjected to and his commitment to reconciliation, those ...[indistinct] not to prosecute. Ackerman and MacAdam objected to the new policy on the grounds that it was unconstitutional, but they were overruled. I should add that Adv Ramartha also expressed his objections.

Thembi Simelane and the Craddock Four widows challenged the amendments in the high court in 2007 and these were, the amendments were struck down as unconstitutional in 2008. Judge Legodi in that matter described the amendments as a recipe for conflict and absurdity.

Let us turn then to the point where the axe really fell on the TRC cases, or the issue of the amendments at the end of 2005 did not clear the way for the TRC cases to go forward. Indeed the clampdown only tightened, the PCOU was still denied investigators and they made this known to the family of Nokhutula Simelane

amongst others.

While the then NDPP Adv Vusi Picoli had cooperated with the executive on these various initiatives in good faith. He started to push back during 2006 when it became clear to him that powerful elements within government structures were determined to impose their will on his prosecutorial decisions.

At a certain point in that year the head of legal services in the police communicated with the NPA and basically said that they could not proceed on any matter until they have received a
10 recommendation from the DG's forum in respect of each and every TRC case.

Later in 2006 Picoli was summoned to a meeting which was convened at the home of Minister Letsoalo Skweyiye[?], then Minister of Social Development, where other capitalists were also present. They indicated their concern on prosecutions on the TRC cases could open the door to cases against the ANC.

In February 2007 Mr Mabandla indicated to Picoli in a letter that she was under the impression that the NPA would not go ahead with prosecutions of the TRC cases. Now Commissioners, this
20 caused an exasperated Picoli to address a secret internal memorandum to the minister in February 2007 in which he bluntly stated the following:

"I have now reached a point where I honestly believe that there is improper interference with my work and that I am hindered and obstructed from carrying out my

functions on this particular matter. It would appear that there is a general expectation on the part of the Department of Justice and Constitutional Development, SAPS and NIA that there will be no prosecutions and that I must play along. My conscience and oath of office that I took does not allow that."

In May 2007 Picoli and Ackerman appeared before the Justice Portfolio Committee in Parliament, where Picoli advised the members that in relation to the TRC cases there was:

10 "Political intervention and the NPA was being held to ransom by the former generals."

One would have thought that those kinds of comments before the portfolio committee would have set alarm bells ringing. The tipping point was probably the decision of Picoli and Ackerman to proceed with the prosecution of former Law and Order Minister Adriaan Vlok and former SAP commissioner Johan van der Merwe and others in relation to the attempted murder of the Reverend Frank Chikane, which resulted in a plea and settlement agreement in August 2007.

20 Later in that same month Picoli was summoned to a meeting of the subcommittee of the justice crime and prevention security cabinet committee. I referred to that cabinet committee earlier. And this meeting was attended by cabinet ministers and various senior officials.

In relation to Picoli's approach on the TRC cases, the late

former police commissioner, Jackie Selebi told them that the gloves are now off and that he was declaring war on Picoli. On 23 September 2007 Picoli was suspended from office by President Mbeki. Picoli is of the view that his approach to the TRC cases contributed to this decision and shortly thereafter Ackerman was summoned to the office of Adv Mokotedi Mpshe[?] who was now acting NDPP. Mpshe advised Ackerman that he was relieved of his duties in relation to the TRC cases with immediate effect.

Commissioners, let us turn to the special dispensation of
10 political pardons. Late in 2007 President Mbeki established the special dispensation on political pardons to accommodate those who had not applied for amnesty, as had been previously recommended by the amnesty task team. And as with the Prosecution Policy amendments, this process was aimed at shielding perpetrators who had not applied for amnesty from prosecution.

The process was held behind closed doors and it also amounted to a rerun of the TRC amnesty programme. Civil society organisations obtained an urgent interdict in April 2009, restraining the President from issuing political pardons and the Constitutional
20 Court in the Alpac[?] matter struck down the political pardons process in 2010.

Now the TRC cases remained buried. From late 2007 following the eviction of Adv Picoli the NPA was placed in complying hands and the TRC cases remained buried for years. Even after considerable pressure, an investigator was appointed in 2010 but the

cases still remained stuck. The dockets and cases such as that of Nokuthula Simelane and the Craddock Four went missing and had to be reconstructed. And typically when a docket goes missing, that is sometimes the sign of a cover-up.

The families were only been taken seriously again when Thembi Nkadimeng as she was known at that time, today she is known as Thembi Simelane, applied to the high court in 2015 for an order compelling the NPA to take a prosecutorial decision or refer the death of her sister to an inquest. And this ultimately resulted in an
10 indictment being issued against four accused in 2016. But it took, Madam Chair, a substantive application to court to get the NPA to act.

And commissioners, the NPA have in fact admitted to the interference on various occasions. The NPA in the Rodriguez matter, this was the permanent stay litigation brought by Jar Rodriguez who was charged with the murder of Achmat Timil. In that matter the NPA admitted in sworn affidavits in 2019 that the organisation had been subjected to interference in relation to the TRC cases.

Adv Chris MacAdam compiled an affidavit for the NPA and
20 although that was held back for some months, it was eventually filed and he attached a number of relevant and helpful documents to that affidavit. But he concluded his statement with the following reference, he says these documents speak for themselves and go a long way in explaining why from 2003 the PCOU constantly struggled to have TRC cases investigated.

In a supplementary affidavit Adv Torry Pretorius SC on behalf of the NPA stated:

"The first respondent does not deny that 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 perpetrators of the political murders such as that of Mr Timil. Where regard is had to what the fourth respondent says in paragraph 84, any conclusion to arrive at is that the delay in prosecuting the applicant was not as a result of the first respondent's own doing or malice, it was as a result of the political interference and the severe political constraints to the first respondent was subjected. We note however that the NPA vehemently in that matter denied that it should be blamed for the lapses and that it did not act out of malice. It was rather a victim of circumstances, given the political pressure from the executive. And we would submit that rather shamefully the NPA did not make reference to its constitutional and statutory obligation to act independently and not to tolerate any interference in its duty to prosecute without fear or favour."

Commissioners, the NPA should have resisted the political interference with the full court and the Supreme Court of Appeal and Rodriguez expressed their dismay at the political interference and

called for a full investigation. The citations are in the footnote. Commissioners, the families will be submitting that the closing down of the TRC cases was not a result of the few bad eggs in the NPA and SAPS, but rather result of a concerted institutional drive to close down and suppress those cases.

Now the families have made numerous calls for a commission of inquiry, following the admissions by the NPA and Rodriguez in a full court calling for an investigation. In early 2019 ten former commissioners of the TRC addressed a letter to the President,
10 calling upon him to appoint a commission of inquiry into the political interference.

When the President was not moved to act, several families, including those of the Craddock Four, Achmat Timil, Neil Aggett and others approached the State Capture Commission of Inquiry, also known as the Zondo Commission, with a request that that commission investigate the interference. As in their view the NPA and SAPS had been captured by outside forces.

The Zondo Commission did commence investigation but regrettably was not able to complete its work on this matter before it
20 closed. A call for a commission of inquiry as well as an apology were also made in a letter to President Ramaphosa on 23 June 2019 for the families of Chief Albert Luthuli, Steve Biko, Achmat Timil, Ashley Kriel and several others. The families followed up again a year later on 23 June 2020, both letters were ignored.

In March 2021 former TRC commissioners together with 18

civil society organisations again pressed President Ramaphosa for a decision on a commission of inquiry. The commissioner threatened litigation and concluded the letter with the following pressing quote from the late Chief Justice Arthur Chaskalson. We need to remember that the first encroaching into rights is often the most damaging and once ...[indistinct] are permitted, the will to resist subsequent incursions is lessened.

So if the Minister of Justice at that time indicated that he was investigating the setting up of an inquiry and the NPA had instituted
10 its own internal inquiry known as the Ntsebeza[?] inquiry into the handling of the TRC cases, a litigation was held back. But when President Ramaphosa did not react positively, he was placed on terms again in July 2024 and the litigation ultimately launched in January 2025, seeking an order compelling the President to establish a commission of inquiry into the political interference and a claim for constitutional damages on behalf of the families.

The litigation ultimately forced the President's hand and within a few weeks of the filing of the papers, he withdrew his opposition to the case and agreed to establish a commission, stating
20 that he wish to engage in mediation with the families. Indeed he said he did not want to fight the families, he wanted closure for them and for that reason he and the other government respondents, except for the NPA, withdrew their notices of opposition, a move that was greatly welcomed by the families.

Sadly however, the conduct of the President and

government has been erratic and subsequently damaging to the families and the country. Because when the families reached out to the President and his team, seeking to mediate and to resolve this matter as one should do, given the issues at stake and given the constitutional imperative of dealing with these matters, the President inexplicably changed his mind and through his team said no, he will not mediate, he will not negotiate.

And so then the government entities then closed ranks and adopted what could only be described as a highly technical approach
10 which was aimed at delaying resolution of the matters. Not only that, the President unilaterally inserted to question the families claim for constitutional damages into the terms of reference of this commission, knowing full well that this body cannot determine rights and remedies, it can only offer advice, which the President is free to reject or ignore.

I will just wait for the phone call to end. Now we have written to the commission indicating that we feel that the proper place for the determination of rights and remedies in respect of the constitutional damages claim is with the High Court. And indeed, that claim is
20 presently before the High Court and the papers are being exchanged as we speak, and that litigation will be proceeding during the course of this year.

The President then took the step of approaching the Court to reinstate his opposition to the family's application, and he brought an application to stay the proceedings pending the outcome of this

commission. That further delayed the litigation. In early October 2025 the application for stay of proceedings was dismissed out of hand by the High Court, which noted, and I quote:

"That it is rather ironic that the government, who is the sole cause for the delay, wants this Court to sanction yet a further indefinite delay without being able to point to any tangible benefit."

Commissions, if I may just deal briefly with the opening statement of my learned friend, Mr Nel, for AfriForum. We take no
10 issues with the submission by Mr Nel that crimes experienced by all sides of the conflict should be treated equally and investigated and prosecuted.

We agree with that contention, there should be no favouritism, there should be no decision based on any political affiliation, and unlike the apartheid era, where only one side was targeted, the prosecutors in the new constitutional era must never be motivated in their decisions by political affiliation. And if Mr Nel's clients are victims of serious and gross human rights violations, and if those investigations and prosecutions were suppressed, then those
20 matters must also be addressed.

And then, Chair, we are deeply concerned that former Minister Jacob Zuma and Thabo Mbeki launched belated last-minute applications in December 2025 for the recusal of the chairperson. Moreover, only last week Mr Zuma launched an application before the High Court seeking to review the refusal of Judge Khampepe to

recuse herself, and Mr Mbeki has also indicated in writing that he will launch a similar application.

Now, the families take the view that this eleventh hour litigation is aimed at derailing the commission's proceedings. They point out that both former presidents are under a moral obligation to disclose what they know about the subject matter of this inquiry.

And the families call upon the former presidents to return to this inquiry, they owe it to the families and those who laid down their lives for a democratic South Africa to explain why they were denied
10 justice, truth and closure.

In conclusion, Madam Chair, the families are satisfied that unlawful and improper institutional interventions stop their cases from proceeding for extended periods. Indeed, three superior courts have already also come to this conclusion, I have mentioned the Rodrigues matter, the full court and the SCA. And also in Mbeki intervention application, that Court came to a similar conclusion, the citation is in the footnote.

However, while we know that interference did stop the cases or undermined them, the full reasons for that obstruction are not
20 known, and the families want to know the actual reasons why they were denied justice. Also the source of the interference remains unclear and opaque.

It appears that arrangements or understandings may have been struck with individuals and entities outside of government to block the cases from proceeding, and the commission is requested,

please uncover the genesis of the interference. The full means by which the will of outsiders was imposed on institutions, such as the NPA and the SAPS, must be exposed.

The families want to know how institutions with firm constitutional and statutory obligations to uphold justice and to act independently so easily abandoned their duties in respect of the TRC cases. Perhaps more than any other class of cases and suppression of the TRC cases has been almost total in its impact.

10 Virtually all the cases were blocked for an extended period of time. Most of the cases cannot be resuscitated, as many perpetrators, witnesses and family members have died in the intervening period. And we take note of the submissions of my learned friend for the NPA that, certainly under the current tenure, and perhaps over the last few years steps have been taken. And to the extent that they have been taken, they are greatly appreciated.

But it is a little too late, it is too little and too late, because it is not going to save the bulk of the cases in which we no longer have perpetrators, we no longer have witnesses, most cases are dead and buried and the damage has been done.

20 The impact visible on families, their communities and on the fabric of society is incalculable. The harm done to the families and South Africa as a whole demands an expeditious, thorough and credible inquiry into the machinations that resulted in such a massive denial of justice.

The families of (indistinct) victims deserve nothing less than

a full open public transparent inquiry. This must include public hearings, the power to subpoena and compel the production of evidence and the right of victims to be represented in the commission to lead evidence and to put questions to witnesses as appropriate.

Where individuals fail to cooperate with the commission, and where public entities fail to produce neither documents, we request, Madam Chair, that they must be compelled through subpoena to appear before the commission. From the perspective of the families, the post-TRC period has been one of the most shameful times in
10 South Africa's history.

The families have lost all faith in the institutions that were meant to uphold the rule of law. There is a critically important need to restore public confidence in these institutions, and, commissioners, this commission can play a key role in beginning the process of restoring trust through a credible and robust investigation that leaves no stones unturned. That is our opening statement, thank you, Madam Chair.

CHAIRPERSON: Thank you, Mr Varney, for your comprehensive opening statement. We shall now call upon Judy Seidman... Is she
20 here? Yes, Judy. Are you going to make an opening statement?

MS SEIDMAN: Yes, (indistinct). Shall I come down to ...(intervenes)

CHAIRPERSON: Yes, you must come forward and be next to a microphone.

MS SEIDMAN: Okay, so I am Judy Seidman ...(intervenes)

CHAIRPERSON: Ms Seidman, how long will your opening statement take?

MS SEIDMAN: Sorry?

CHAIRPERSON: How long will your opening statement take?

MS SEIDMAN: I would think between 30 and 45 minutes.

CHAIRPERSON: Okay.

MS SEIDMAN: I am Judy Seidman, I am presenting on behalf of Khulumani Galela Reparations Movement.

COMMISSIONER KGOMO: If you can raise your voice a bit?

10 CHAIRPERSON: Can you raise your voice or pull the microphone closer to your mouth?

MS SEIDMAN: Ja, okay. I am Judy Seidman, I am presenting on behalf of Khulumani Galela Reparations Movement. Khulumani Galela is a mass-based social movement, comprised of and representing victims and survivors of apartheid crimes against humanity. Our movement first came into being in 1996 with the establishment of support groups around the country to assist victims and survivors telling their experiences of human rights violations to the TRC. The original group is called the Khulumani Support Groups.

20 Many of our members today actually come from that original source of people going to the TRC. In 2000 these support groups joined to form the NPO called Khulumani Support Group. Two decades later, many of these victims and survivors and activists determined to launch the Khulumani Galela campaign.

Khulumani Galela asserts that the post-TRC processes have clearly failed to fulfil constitutional promises of justice, redress, truth, and repair for victims and survivors. We call upon government to fulfil its long-standing promises to both meet with us, as victims, and provide those promised outcomes of justice, redress, and restoration of human rights and dignity.

For the past several years, sorry, for the past several years our members have protested government's failure to meet these commitments. In particular, members have risked life and well-being
10 for the over two years, holding an ongoing protest, occupying the space in front of the Constitutional Court while our government continues repeatedly to ignore us, despite many, many, many efforts to engage with them, and to ask them just to meet with us to approach these questions.

So in this context, Khulumani Galela fully welcomes and expects to contribute to this commission of enquiry into what we consider failed TRC outcomes. So in terms of the commission, our input refers to what we see as two key mandates ...(intervenes)

CHAIRPERSON: Sorry, ma'am, could you please speak up a bit
20 louder?

MS SEIDMAN: Okay, in terms of this commission, our input refers to two key mandates. First, the commission will enquire into whether, why, and to what extent, by whom efforts or attempts were made to influence or pressure members of SAPS and the NPA to stop

investigating or prosecuting TRC cases, and whether government actors might be held accountable for such interference.

Secondly, we feel the other key terms of reference that we need to input to is the one that says: "Whether in terms of the law and fairness is the payment of any amount of constitutional damages to any person is appropriate", as this obviously speaks directly to our members.

So first let me talk about the question of stopping investigations and prosecutions of TRC cases after 2003. Firstly, I do want to say
10 we very much appreciate build upon the incredible work that has been done by the families at FHR, and I am not going to try and repeat all of that in the introductory statement. I might mention it where it is particularly relevant.

We do want to say that, to start with, it is important to recognise that the term "TRC cases" refers to all the cases that fall within the scope of the promotion of the National Unity and Reconciliation Act of 1995, the so-called "TRC Act". The Act defines victims as, quote:

20 "Persons who suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss, or substantial impairment to human rights."

And it then includes people who supported such persons and suffered violations as a result, and, of course, the descendants, dependents, relatives, and descendants of such victims.

The TRC cases further are limited to human rights violations that occurred between 1960 and 1994, and cases that were undertaken with a political motive. We hope, although we still have to discuss the details of this, we have literally hundreds of testimony from our members, from victims and survivors about their efforts to give statements about violations that they experienced to the TRC as specific examples of these TRC cases. These TRC cases are examples taken from a number of different categories and sectors that we consider fall within the definition of the TRC cases, and just to
10 mention some of them.

Cases that the TRC did not recognise as qualified gross human rights violations under the Act. These cases include, these include cases where victims were unable to give statements to the TRC for a range of reasons. Statements where victims were unable to provide sufficient evidence to prove that their testimony was correct while giving statements at the TRC.

And we note that both the NPA and Adv Varney's statement point out the lack of evidence that was available for so many of these. But many people did go to the TRC and simply did not have the
20 backup information, other than their own word as having experienced it.

There are also other statements that were submitted to the TRC that were rejected because they felt that they did not fill the criteria of gross human rights violations made with a political motive. And we highlight here the category of the rape cases, which the TRC

determined, apparently, we are told, on the ground that they did not include rape as a as political crime because it was personally motivated, and that people were not ordered by their seniors to commit rape.

Now, we all know from world experience and from South African experience, that is not actually a description of many rape in political context. But the fact is that many, many women presented statements about rape to the TRC and were told they would not take the statements because they did not fit the political motive criteria.

Violations that fall under these categories that were not handed
10 over as defined cases to the State to investigate or prosecute. We note that the TRC Final Report Volume 7 admits that it was unable to take forward many of the cases because of difficulties faced within the TRC, including lack of access by victims, lack of investigative capacity within the TRC, failure from many victims to give statements within the limited time frame of the TRC. The TRC itself in its final recommendations calls upon government to put in place a national discourse and other measures that would lead to follow up on unheard cases. Specifically, the recommendations:

20 "That victims should not be re-victimised, and that any amnesty should take into account their needs and their right to the truth and full disclosure and ultimate reparations."

That is in Volume 7 of the final TRC Report. The third area that we want to speak to are cases that were heard by the TRC, and that

were passed onto the police and the NPA for further investigation and prosecution at various stages of the TRC process.

And I think Adv Varney has talked quite a lot about that, but what we want to say about these is that the list that they have presented as affidavits to this commission involved many of our members, and that these cases were just not dealt with in the period after the closure of the TRC.

So in this case, we feel we have a direct interest in this question of why these cases were closed down, and that it is critically
10 important that victims' voices are heard in this. Because one of the big problems that we find in the post-TRC 2003 period is that victims, with the exception of the cases that have been brought by FHR, victims' voices have been simply told you do not even exist in terms of the TRC in many, many cases. And we can actually provide examples of that, of being told by senior officials of government you are not really victims, so go away, go home and stop bothering us.

Cases where amnesty was refused to applicants is another category. Again, as we have discussed, and I am not going to go over the figures, but over 7 000 people did apply for amnesty. The TRC
20 denied amnesty to the figures I have of 5 392 perpetrators, mostly on the grounds that they did not tell the whole truth.

As a result of that failure to tell the truth, many of the victims whose cases would have been recognised had they told the truth, therefore have no proof that their cases were there. So there is a direct link, in our view, between the failure to prosecute perpetrators

and the silencing of victims about their cases, and we will come back to that.

We do want to point out that there is major overlap between the categories we have just mentioned. People who were not qualified as victims of the TRC or did not appear before the TRC do appear as unnamed victims in some of the TRC files that we know were handed over to the NDPP and SAPS for investigation. And again, we really want to thank the incredible work done by the families and the Calata applicants on this.

10 Just as an example, one of the files handed over in 1999 is not actually a case. It is a file that covers, quote, "East Rand train shootings from 1991 to 1993". It mentions 60 people killed, of which it mentions one, one name of a victim. Many of our members lost family members or were injured in those train shootings. Those cases were handed over; as far as we know, they were thrown out.

 Not all of those people did get to the TRC. Again, the chances of their ever bringing their cases into public once that was closed was gone as far as they were concerned. And there are also dubious cases, as I said, where perpetrators were refused amnesty but were
20 neither investigated nor prosecuted. And these, again, involved many victims who were unable to access the TRC, and therefore could not provide proof of the violations that they actually experienced.

 And proof, by the way, does not include being shot in both legs, because you have to then get a hospital or police statement that you were shot under such conditions, and those were simply not

accessible to people who were shot under conditions in the early 1990s or late 80s. And we are told many of the hospital records have also been destroyed.

We know that this commission is directed to enquire into refusal to investigate and prosecute TRC cases after 2003. The commission's evidence leaders have said earlier that this does not preclude introducing testimony of efforts prior to 2003 to stifle or bypass or refuse to investigate or prosecute cases.

10 So historically, as Khulumani Galelo, we think we need to emphasise two underlying arguments used during the TRC to refuse to accept victims' stories as sufficient evidence of a victim's status. One was that evidence was not required from victims, as perpetrators would tell all, and therefore there would be no need for further evidence to prove victims' stories. That, as we know, just did not happen for most people.

20 Secondly, victims' stories were framed, and the TRC is quite explicit about this in its victim hearings, as giving, quote, "a broad understanding of human rights violations rather than either identifying each and every case of violation, or in finding specific evidence to establish cases against perpetrators", thus, the TRC was not given the powers to investigate.

If somebody came with a story to the TRC and they did not have the police, the evidence that the police had done such a thing to them, or whatever, whatever, the TRC simply did not have the powers to further investigate. We need to emphasise, however, while these

problems hindered recognising victims prior to 2003, and thus prevented and interfered with investigating and prosecuting perpetrators, the TRC's final recommendations both admitted to and proposed ways to correct these difficulties.

Khulumani Galela, therefore, suggests that this commission needs to look at not the blockages within the TRC to recognising victims, but the measures taken upon the closure of the TRC not to recognise those victims, despite the fact that their cases had not been properly made.

10 Khulumani also plans to testify that the fundamental shift that occurred in terms of investigation and prosecution of perpetrators was introduced by a series of linked government decisions made in 2003, after the closure of the TRC. These were articulated and placed before the nation by then President Thabo Mbeki in a speech to Parliament on the 15 April 2003.

This speech, which explicitly claimed to chart the way forward for government action after the TRC was formally closed, puts forward a number of core alternative proposals to the TRC recommendations. These include, firstly, to only recognise as TRC victims those persons
20 qualified by the TRC as victims.

That is the so-called "closed list", that if you did not get to the TRC or your story was not accepted or you did not have proof, you did not count as a victim. That became a formal regulation, well, a formal proposal of government in 2003. It had been put forward to the TRC

and had much discussion, and in their final volume they questioned it, in fact, but it was formalised in the April 15th speech by Thabo Mbeki.

Secondly, to provide special pardons or special indemnity, however, it was framed, to perpetrators who did not apply for or were not granted amnesty. And I think, again, Howard Varney has talked very in detail about how that process went forward, and that was first mooted in the 15 April speech.

To cut back on reparations given to victims, only to qualified victims, to less than a quarter of the amount recommended by the
10 TRC that they considered adequate and appropriate. So it went down from approximately R126 000 to R135 000 per person to R30 000 once off, finished, and again, only to people on the so-called "closed list".

And then to ensure that a number of other measures that were taken, these were also mentioned in the same speech, that also prevented further follow-up on TRC outcomes, such as introducing a wealth tax, seeking financial compensation from transnationals as a means to reclaim from those who had benefited from apartheid crimes.

20 So all of those were put together in the same speech and presented to Parliament, essentially as an alternative to the TRC recommendations in Volume 7, which we believe actually tries to rectify some of the problems that they had encountered. Hopefully we will... Sorry, technology is not cooperating, and I do not know why. There we go.

Okay, so taken as a whole, the measures proposed in Thabo Mbeki's 15 April 2003 speech ensured that any evidence by victims that had not been placed before and accepted by the Human Rights Committee, or was not revealed and confirmed by perpetrators seeking amnesty, would not be accepted as an outcome of the TRC. It blocked other mechanisms that might provide ways to ensure that government could prosecute and hold to account apartheid-era perpetrators, including specifically the first proposal about a (indistinct) process.

10 In terms of testimony on this, we have actually collected literally hundreds of statements from our members about how this affected them personally. We would like to present possibly eight or nine or ten of these as core examples to this commission to show what the impact was. We still have to negotiate as to what is feasible.

We realise it is not the role of the commission to rehear the TRC or re-decide the TRC, but rather this is to talk about how people were actually affected by this directly, and how they were persistently not included. One of the points that is frequently made is that after those cases in their various forms were handed over to the NDPP and the
20 SAPS to follow up, not a single case that we know of went back to the victims who were named and asked them for any input, it is just silence.

So, and we feel, I should just add, that in the several cases, again, I think Howard Varney has mentioned them, where these have come before the courts, the courts have mentioned that not hearing

victims on the issues of perpetrators has been one of the actual violations of constitutional rights, but this actually, to us, forms proof of this. We could also submit written testimony from our members not for actual presentation, if that would be useful. We can discuss that.

Okay, so secondly, the second area that we wanted, that we flagged as the terms of reference, was the question of constitutional damages. And to quote, "whether in terms of the law and fairness, the payment of any amount in constitutional damages to any person is appropriate".

10 We hope to provide evidence to the commission that counter-proposals to the TOC recommendations presented by government on the 15 April 2003, have been found by our courts on several occasions to be in direct violation of constitutional rights. Notably of victims' rights to justice, redress, and restoration of human dignity, and that government has an obligation to ensure this ...(intervenes)

COMMISSIONER KGOMO: Can I just...

MS SEIDMAN: Our government has ...(intervenes)

COMMISSIONER KGOMO: Sorry, can I just enquire from you, if I should understand you correctly, that at paragraph 102.2, where Mr
20 Varney says that: "The President also unilaterally inserted the question of the families' claim for constitutional damages", and so on, and so on, you are not going to agree with that, you will go the other way?

MS SEIDMAN: We are arguing that constitutional damages as a category includes, but is much broader than the question that they

brought up. We do not object to that by any means. We fully agree that the courts, it is before the courts, let the courts decide it. But we feel very strongly that this commission being mandated to look at the question of who should or whether people should be getting constitutional damages. Our argument is very strongly yes, and it is much broader than just that one question, which we support. We go ... (intervenes)

COMMISSIONER KGOMO: No, I just wanted to see whether I understood you correctly.

10 MS SEIDMAN: Ja.

COMMISSIONER KGOMO: Thank you.

MS SEIDMAN: Ja, so we argue that as the constitutional rights of victims, and particularly victims of apartheid crimes, as in the TRC cases, have been established and confirmed by principles in the Constitution to the right to justice, basic human rights, respect for human dignity, and equal treatment.

We note that the AZAPO case in 1996 specifically stated that the clause in the TRC offering amnesty to perpetrators could only be constitutionally workable if victims were actually, If the State took
20 responsibility for adequate and appropriate reparations for victims. The judge went on to explicitly state that this was guaranteed by provision in the TRC Act that Parliament would provide surety that TRC victims receive such reparations. And there is also extensive evidence that suggests Parliament made little or no attempt to carry through on that after 2003.

The TRC Promotion of National Unity Act Commitment to Ubuntu Reconciliation and Reparation, it is there in the Act. The TRC recommendations in volume 7 of its final report called for follow-up on prosecutions and reparations both. These were not accepted by government, starting with that speech on the 15 April in 2003, and it did not happen.

The 2008 judgement in the Nokuthula Simelane matter that Howard mentioned actually opposes the special partners' dispensation as essentially a backdoor blanket amnesty, and it ruled
10 that the specific pardons process denies victims' rights, which consistently affirm that victims must be included in any individual pardon or amnesty decision.

The court then ruled that failure of the special partners' dispensation to engage with victims' views and concerns was unconstitutional. Again, we can go into the details of this. We hope we will be giving full evidence later.

We will also present as Khulumani Galela Reparations Movement to the commission the mandated resolutions of our own members calling for constitutional damages for victims and survivors
20 who have suffered now for 25 years since the closure of the TRC of the failure to provide promised justice, redress and restoration of human rights and human dignity to apartheid victims. Again we can provide examples of individual testimony of the impact this has had on people's lives, and we need to discuss what is feasible within the context of the commission, and so on.

We do want to mention that, as well as the illness and death and living in poverty, and everything else that many victims have had to deal with since the closure of the TRC, with no way to ask for redress at all, or we were told there was no way.

We have also in the course of our demonstration at ConCourt, we have lost nine members living in very unhealthy and life-threatening conditions, including the Court refusing to allow us to use toilets and water, and so forth, on the grounds that they do not consider this a legal demonstration.

10 Despite the fact that we have informed the Court and the Presidency, and so forth, that we are doing this, then they actually had said they would meet with us, and then they would meet with us, and so on, and so on. I am not going through all of that.

I think I should just mention two of the people who died at ConCourt specifically. One of them is (indistinct) from Cape Town, He developed, he was in his early 80's I think, he developed a form of asthma which affected his heart after sleeping rough outside ConCourt for, I think it was six weeks. We did get him to hospital, and eventually he was flown back to Cape Town, but he died at
20 home. Another member, Thabo Shabangu, had essentially a stroke after spending a year and a half at ConCourt and died there ... (intervenes)

COMMISSIONER KGOMO: Sorry, I do not want to interfere, but will it help ... (intervenes)

MS SEIDMAN: Sorry?

COMMISSIONER KGOMO: Will it help if you those members who have passed on, to get their names, and if possible ...(intervenes)

MS SEIDMAN: Yes, we intend to submit all of this information, indeed.

COMMISSIONER KGOMO: Yes.

MS SEIDMAN: So... Sorry, my technical problems are giving me trouble again. I do not understand this. Okay, so I am just about to finish then. So what we are asking from the commission then is essentially a recognition that there are victims and survivors.

10 That these victims and survivors have clear grounds to call for constitutional damages, and specifically we are asking for damages for victims, survivors and their families and descendants who were denied adequate and appropriate reparation and justice promised through the TRC process, and this was denied again after that decision in 2003.

This denial has been enabled and enforced first by government's persistent refusal to follow up on investigations and prosecutions flagged by the TRC for further action. And, secondly, by government's continual and ongoing refusal to take victims' perspectives into account in any of these issues, and actually blaming victims for the difficulties they face while calling for redress and reparation.

20 And then, secondly, we also call for constitutional damages for those victims who have risked their lives and wellbeing attempting to bring these matters to government's attention, where government has repeatedly said they will meet with us, including in signed affidavits at various points. And then a month or two down the line say, well, we have decided not to without giving us reasons, and it has been a very painful

story.

I think I would just like to conclude by saying that we feel this commission offers really for the first time in 25 years an opportunity for these issues to be dealt with appropriately and properly by our constitutional democracy, which we feel we fought for, we are very proud of. It needs to be activated the way it is supposed to be activated. Our Constitution has laid down basic principles which we need to enforce, and we are very pleased and proud to be able to present this in public and to this commission, thank you.

- 10 CHAIRPERSON: Thank you, Ms Seidman. I think this would be an appropriate time to adjourn for tea, and we will reconvene at 11:15 or, no, at 11:20. We will reconvene at 11:25.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Hathorn we will receive your opening statements.

MR HATHORN: Thank you, Ma'am Chair. Good morning to you and the... (intervenes)

CHAIRPERSON: Yes.

- 20 MR HATHORN: Commissioners... (intervenes)

CHAIRPERSON: Bring your microphone closer to you.

MR HATHORN: Okay. Can you hear me better now?

CHAIRPERSON: No, barely.

MR HATHORN: Ma'am Chair, we prepared an opening statement in October. I have sent an opening statement, an amended and abridged opening statement to the Secretary this morning.

CHAIRPERSON: Yes, how long are you going to require for your opening statement, Mr Hathorn?

MR HATHORN: I think not more than, not much more than 10 minutes.

CHAIRPERSON: Thank you, Mr Hathorn.

MR HATHORN: Perhaps 15 at the outside.

10 CHAIRPERSON: Yes, you may proceed, sir.

MR HATHORN: Thank you. Yes, so my name, Commissioner, is Moray Hathorn. I am an attorney at the Legal Resources Centre in Johannesburg. I am accompanied by my colleague, Shatira Hasim... (intervenes)

CHAIRPERSON: Yes.

MR HATHORN: Who is co-author with me of the opening statement.

The Legal Resources Centre acts for the family of the late Dulcie September. It takes its instructions from Dulcie's September's nephew, eldest nephew, Michael Arendse, who resides in Cape
20 Town. It is he who represents the family in its relationship with the Legal Resources Centre.

In my October statement, I made a long it was a long section on the history of Dulcie September's activism. As interesting as it is, I will only start with her appointment as the ANC's Chief

Representative to France, Switzerland and Luxembourg at the end of 1983. She was stationed at the ANC office in Paris.

Her time in Paris was marked by her fierce commitment to imposing strict sanctions on the apartheid regime and ensuring that countries stuck to them, making enemies both in government and those with business interests in Southern Africa.

On 29 March 1988, between 09:45 and 10:00 am in the morning, Dulcie September was shot five bullets in the head with a .22 caliber silenced rifle in the hallway as she was entering the ANC's
10 offices in Paris. There were no witnesses, save for one resident of the building, a Mr De Crepy, who heard footsteps running down the stairs after the shots were fired.

I come to the relationship with the Legal Resources Centre. The NRC was initially approached in this matter by Jacqueline DeRenes, French anti-apartheid activist and former colleague of Dulcie September. Towards the end of 2017, after she had heard former NRC Director Steve Kahanovitz address a conference in Paris. During a visit by Michael Arendse, the eldest nephew of Dulcie, as I
20 Paris, France to commemorate the assassination, a meeting was held between family members and senior officials from the town of Arcueil, where September had lived, forgive my pronunciation, to explore ways to reopen the case in France and South Africa and to get the two countries to cooperate in the investigation. It was after that that

Michael Arendse secured a meeting with Steve Karhanovitz in April in Cape Town of 2018.

The LRC directed a request to the SA Embassy in France and to DIRCO. The response led to the disclosure of an archived box in South Africa retrieved by the LRC, but containing only documents relating to Dulcie's September's life in South Africa before going into exile.

The LRC's search in June, July 2015 also led to the South African Historical Archives, specifically their Section 29 documents
10 from the TRC and their Right and Truth Project findings, both of which had been classified for many years and had only recently come to the public eye through the tireless work of the SA History Archive. The LRC's check on the Section 29 records at the archive produced nothing of note concerning the assassination.

The French investigation. The family did not ask the South African authorities to investigate Dulcie's death. Believing this obligation lay with the French authorities. However, the family did brief the LRC to conduct investigations in South Africa.

As far back as 1992, the French authorities had closed their
20 docket on the Dulcie's September murder after it was ruled by French judge Claudine Forkel that there was no new evidence. In this regard... Well, let me just carry on.

The TRC investigation. The TRC investigated the matter of the murder of Dulcie September. The TRC assigned the task to a seconded Swedish policeman, Jan Åke Kjellberg. Of particular note,

we have taken a statement from Kjellberg. We have had several consultations with him and have made that statement available. It is an unsigned, it has not been sworn to yet. If needs be it can, but I see from the rules that we do not need to have an affidavit sworn. But if we should do it, we will.

That statement has been placed before the Commission on the 3rd of this month. In that statement, Kjellberg says the following:

10 "On 13 February 1998, during his time, of course, investigating the matter for the TRC, a meeting was held with Dr Torie Pretorius in his office in Pretoria."

Pretorius, of course, being a senior member of the NPA, a senior prosecutor of the NPA, who has been referred to in discussion this morning. So, concerning the investigation into the assassination of Dulcie September in Paris on 29 March 1988, Pretorius disclosed the following information. This is Pretorius' information as recorded by Kjellberg.

20 "Based on intelligence received from an undisclosed source, Dr Pretorius reported that the weapon employed in the assassination was allegedly sent from South Africa to the London Embassy via diplomatic mail. The gun was handled by a representative of the National Intelligence Service of South Africa in London, and subsequently collected by another NIS representative stationed at the South African Embassy in Paris. This individual reportedly traveled by car from Paris to

London to collect the weapon."

"Kjellberg notes, no detailed information was provided regarding the identities of those involved, the vehicles used, or the precise timing of the transfer."

I would submit, though, that it appears that Dr Pretorius knew much about the assassination, whilst he was at the time a senior NPA official. And it must have investigated it to some considerable degree. Therefore we submit that the Commission ought to call Dr Pretorius to these proceedings to testify what he
10 knew about the Commission, what he knew about the murder, and to testify what he knows about the apparent closure of the investigation at that point. There is no evidence that we know of, that the family knows of, of any further investigation by the South African authorities, notwithstanding the knowledge which Dr Pretorius had of the assassination, until 2022.

So, in fact, for 24 years, including the periods from 2003 onwards, there was no investigation. Michael Arendse was informed by the Directorate for Priority Crime Investigation in November 2022. I have got 2002 in my, in the document I sent to the Commission this
20 morning. He was informed by the Directorate for Priority Crime Investigation in November 2002 that it had started to investigate the assassination. And that would, of course, be consistent with the obligations of the prosecuting authority to keep the victims informed of what is going on and to consult them about important decisions.

And that also was referred to us this morning. That was discussed this morning.

We do know that in October 2025, an application by the Director of Public Prosecutions, Western Cape, to invoke the Mutual Legal Assistance on Criminal Matters Treaty between South Africa and France in the September matter was granted. I have made that document and the associated documents available to the Commission. They were sent to the Commission. I cannot tell you the date, Ma'am Chair, but recently. This treaty... So the treaty must
10 be read with the International Cooperation in Criminal Matters Act number 75 of 1996. This Act commenced on 1 January 1996. The treaty was ratified by Parliament on 11 November 2002 and it came into force on 1 March 2004 and published in the *Government Gazette* number 27371 on 18 March 2005.

So the South African Prosecuting Authority has had at its disposal and use this treaty since, with effect from 1 March 2004. The first we hear of it being invoked is information given to Mr Arendse last year that the application had been successful and as I say, the order granted by the Court has been made available to you.
20 The question then arises, why has it taken South Africa until 2022 to begin to investigate the Dulcie-September case or at least to resume investigation of the Dulcie-September case after it would appear that Dr Pretorius started that process and it must have stopped as far back as 1998?

We believe that Dr Pretorius can shed light on the answer to these questions. His answer can, we submit, assist this Commission to find the answers required of it in terms of the terms of reference contained in the Proclamation Notice establishing the Commission. So too we submit that the documents which we have asked the Commission to call for in terms of paragraphs one, two and three of our letter, of our e-mail to the Secretary of the Commission dated
10 3 February 2026 can help answer this question.

I will just quickly run through what those documents are. We have requested the Commission to call from the records of the TRC for the report of Mr Kjellberg himself to the TRC on his investigative activities on his behalf on his trip to Paris in November 1997 where he was asked to go to Paris to investigate disconcerting evidence about who might have carried out the assassination.

The background to this is set out to what happened on that trip is set out in the statement of Kjellberg which we made available to the Commission. It appears that Kjellberg was accompanied by Mr
20 Wilson Magandla who was not known to him certainly his professional capacity was not known to Mr Kjellberg. It appears that in fact he was not a member of the police. At one point in discussions with a witness Kjellberg felt that the witness was about to divulge important information. He became excited and Kjellberg informed me that any good policeman will know that when a witness in an interrogation

becomes excited very often it is a prelude to important evidence being divulged. At that point Mr Magandla stopped the discussion and in fact brought them home without further ado and stopped the investigation. Mr Magandla is deceased.

Mr Kjellberg can testify to this episode and therefore we ask also that this Commission call from the records of the TRC for all reports of the activities of the late Mr Wilson Magandla in connection with his trip to Paris. In particular the purpose of his making this trip including whether he might have been assigned to rein in the
10 investigation of Mr Kjellberg on this trip. We further ask Mr Kjellberg further gives evidence in his statement that he received a document from the TRC in Cape Town in which the people in whose possession it was were asking him to translate it because they believed it was in French. Mr Kjellberg assured them it was not in French it was not, it was, they said it was in French. So that is the real point that the statement was a French document in fact Kjellberg said, "It was the first page of the of the docket of the French police into the investigation of this matter". It was not recognised as such and therefore we also call we also ask this Commission to call from the
20 records of the TRC the French police file on the murder of Dulcie September which we believe to be in their possession based on the statement of Mr Kjellberg. Kjellberg is willing to give [indistinct] evidence to this Commission either in person or remotely. He is resident in Denmark.

I would therefore stop on that note Ma'am Chair. We ask this Commission to arrange for the testimony. It can be done remotely for Dr Kjellberg to give his testimony to this Commission and we also ask that in the light of that testimony Dr Pretorius be called to answer his questions of what he knows about the investigation of the Dulcie September murder and what does he know about it having been stopped.

It is probable that he was the investigating officer and he was in charge of this matter in the TRC in the NPA at the time. He would surely then be the person who has knowledge of this matter and who should be questioned about what he knows including in respect of the reasons why the investigation was stopped and in fact not resumed until the end of 2022. And it is for those reasons that we also ask for the three documents which we believe are relevant and which we believe are in the possession of the TRC archives. We ask you to exercise your powers to obtain those documents, to call for those documents. Thank you.

CHAIRPERSON: Thank you Mr Hathorn. We will now call Mr Lipile to come and present his opening statement.

20 MR LIPILE: Thank you.

CHAIRPERSON: Mr Lipile, how many minutes are you going to require for your opening statement?

MR LIPILE: Thank you Ma'am Chair. Ten minutes will be fine for me.

CHAIRPERSON: Ten minutes. I will hold on to ten minutes.

MR LIPILE: Thank you Ma'am Chair. Honorable Chair of the inquiry, Justice Khampepe, Honorable Commissioners and fellow South Africans, I make this statement on behalf of Khulumani Support Group and its members and associates. In my role as Chairperson of the National Steering Committee, Khulumani Support Group is the national membership organisation of victims and survivors of apartheid, atrocities and human rights violations. Khulumani members lived the history of struggle against apartheid and those who have survived, continue to carry the consequences of their

10 violations.

Khulumani Support was founded in 1995 at the time that the Parliament initiated debates about the proposal to host a Truth and Reconciliation Commission. Victims and survivors received no invitations to inform the debates. Subsequently Ms Sylvia Dlomo-Jele and Ms Catherine Mlangeni, as former members of the Detainees Parents Support Committee, initiated community dialogues, each attended by hundreds of survivors.

The question they debate was the wisdom of participating when they had been excluded from the planning for the TRC from the

20 start. The consensus was reached that participation was preferable because of the hope that this might contribute to an agenda of redress. That hope has seen almost no realisation over these past years.

This inquiry takes place 31 years since the debate of 1995 and is characterised by extraordinary limited terms of reference. The

ambit of the inquiry reinforces for survivors the sense that the state has long turned its back on the majority of the people who paid with their lives to bring them to power. This perception is reinforced by the experience of extended delays in initiating the inquiry attributed to the recurrent attempts of political connected to intervene, to halt or to delay the important work of truth.

The prolonged delays have meant hundreds have died without being heard, their voices now permanently silenced. Thousands have grown old without the recognition and weight the
10 wounds from the past carried by ordinary people keeps growing intensified by the levels of disrespect meted out by those in position of authority to the wounded, who carry deeply unsettled accounts about our history. Many who have gave the best years of their lives to the life of struggle for justice and dignity have voiced to us their sense that they wasted their lives in service to a vision that has faded beyond any recognition in the present. How did this become our
20 current political reality?

Tragically, South Africa in 2026 has not aligned itself with the African Union agenda of its declared Decade of Reparatory Justice
20 2026 to 2036. South Africa has in contrast continued to regard reparation as a mere symbolic demand rather than as a matter of justice, dignity and development.

The situation has been characterised by a complete lack of wholeheartedness in dealing with serious violations of apartheid with the Truth and Reconciliation Commission that generated only 17,600

acknowledged victims of apartheid cross-human rights violations to the present. Only these individuals with their children and grandchildren have been recognised as eligible for the limited reparatory measures that have emerged from the TRC Implementation Unit in the Department of Justice.

It has been under the direction of the State that the TRC Unit has been complicit and almost completely ignoring the draft reparation of rehabilitation policy that Professor Hlengiwe Mkhize in her capacity as the Chair of the TRC Committee on the Reparation and Rehabilitation constructed from her direct engagement with survivor communities across the country. It became evident that the State had long decided that the people damaged by apartheid atrocities could be left to their own devices, abandoned by those it had brought to power, as if they were damaged goods in a situation where Khulumani experience has been of remarkable capacity of survivors to serve the nation as wounded healers.

The State assumed the role of intimately promulgating ad hoc regulation on reparation to address only 17,600 victims and survivors out of 22,000 statements the TRC collected while it was active. It has been only these individuals who have received the TRR number that qualifies them for the limited reparation the State has approved. Around hundred thousand proud struggle activists have received no reparatory support. They have been silenced and ignored. As they have aged, their suffering has deepened, while those in positions of power, turning a blind eye and a deaf ear to the

calls and the appeals that Khulumani Support Group continues to receive every week. This suffering cannot be ignored at the cost of the well-being of our country, especially given that two million 2.6 billion remains in the Victims Reparation Fund, the President Fund, that Khulumani Support Group has had to continuously fight to protect for the purpose for which it was established through contributions of supportive donor government. Their goodwill has long dissipated.

Through decades of survivors-led community-based work, Khulumani Support Group has documented more than 120,000 victim
10 statements of apartheid and across human violations. These testimonies come from across Africa, rural and urban, women and children, families of the dead and disappeared, survivors of detention, torture, displacement, and political violence.

The difference between 17,600 and more than 120,000 is not a technical discrepancy. It is the consequence of deliberate exclusion. It speaks loudly to the limits of original TRC process, which with its restricted mandates, narrow definition of harm, short timeframes, geographic barriers, fear, trauma, and poverty. Many victims simply could not reach the Commission in time or could not
20 speak when speaking still carried danger. When TRC closed, victim did not end, but recognition did.

For those excluded, non-recognition became the second injustice. Reparations were designed and delivered on the basis of partial victim population, leaving the majority of survivors outside the moral and material concern of the democratic state.

This inquiry therefore carries a profound responsibility. Not merely to review past findings, but to confront the consequences of exclusion. Not to treat victim recognition as a closed administrative exercise, but as a continuing obligation rooted in dignity and justice.

Khulumani's presence here is not oppositional. It is evidentiary. Khulumani's database is not symbolic. It is a record of lived harm. Khulumani's leadership is not abstract. It is grounded in communities that have waited far too long.

We urge this inquiry to resist political pressure, procedural
10 narrowing, and the temptation of premature closure. Truth cannot be managed for convenience. Reconciliation cannot be achieved through silence. Justice cannot be postponed without cost.

This inquiry has an opportunity and a duty to affirm that the lives of those previously excluded still matter, that their suffering still counts, and that reparatory justice in South Africa remains possible.

We appear before not to reopen old wounds, but because these wounds were never healed. We call for all forms of political interference to be ended. The dishonoring politics of the State and the abusive politics Khulumani has had to face at the hands of former
20 civil society partners. We will not be deterred in our sustained struggle for justice, fairness and dignity. I thank you.

CHAIRPERSON: Thank you Mr Lipile. We shall now connect virtually to Ms Robyn Lichter on behalf of AfriForum. I will take a short adjournment.

ADV SEMENYA: Chair, Commissioners, I propose we adjourn for the moment and let me just establish what is the logistical difficulty.

CHAIRPERSON: Yes.

ADV SEMENYA: With her communication.

CHAIRPERSON: Let us take a short adjournment.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV SEMENYA: Chairperson and Commissioners, we gather that we are now ready to continue with the opening statements, but
10 however, it will only be audio, not visual.

CHAIRPERSON: Yes, no, that is fine. Is Ms Lichter ready and available to present her opening statement?

MS LICHTER: I am. Can you hear me clearly?

CHAIRPERSON: Yes. How much time would you require, Ma'am?

MS LICHTER: I would say about 15, 10-15 minutes.

CHAIRPERSON: Thank you, you may proceed.

MS LICHTER: Thank you, Your Honor, Ma'am Chair, and my learned colleagues of the team for creating this inquiry and in this format that we have today. Our case is about the Reebok air crash on the
20 13 March 1967. We echo all the sentiments for justice by our co-applicants.

This statement is our submission to the South African Commission of Inquiry into the TRC cases, focusing on the crash. It outlines the case as an example of stopped TRC cases detailing the crash in 1967. Almost 60 years ago, early in the apartheid era, it

gives previous findings of the official inquiry of our stopped submission and requests the submission to finally order investigation of this case to provide truth and justice as recommended by the current inquiry's mandate and to hold individuals responsible for these crimes accountable.

There were 26 victims of this crash. Ms Audrey Rosenthal, Professor Johannes Bruwer, Mr Clifford Anderson, Mr Vernon Edkins, Mr Joseph Blankfield, Mr Rother Laue, Mr Archibald Eaton, Mr David West, Mr Charles Williams, Mr Julie Venturas, Mr Desmond Clear, Mr
10 Hans-Jürgen Dorn, Mr Graeme Evans, Mr Douglas Lamb, Captain Lamb, Mr Max Melmed, Mr Leslie Scott Pearson, Mr Victor Baden-Powell Wood, Ms Edith Verena Lavinia Wood, Mr Norman Susnow, Captain Gordon Lipawsky, Co-Pilot Richard Trenwith, Senior Flight Steward Bezuidenhout, Flight Steward De Beer, Air Hostess Petra van der Poel, and Captain James Boyd.

I give special thanks to all those who have worked over the years to help bring truth and justice for this case. It has been a very long and traumatic journey, but many have stayed the distance. In particular, I mention Adam Elston, whose wisdom, advice and support
20 have been ever-present for decades to me, leading us to this point. I also pay tribute to all those who have worked tirelessly but in vain to attain recognition at the original TRC in 1998, namely Helen Brown, Johannes Bruwer Junior and Martin Legassic. Sadly, most of the victims' immediate family members have since given up due to

distrust of the system or continued to suffer generational trauma with memory of this trauma ever close to the surface.

Our contention is that had this event not occurred, much of South Africa's apartheid atrocities may not have been part of our history. Like the Freedom Charter not being taught in my years at school, the crash of this plane has not been taught as an historic event for today's generation. We wish to change this. We wish to reveal the truth, to bring a stop to us being called conspiracy theorists.

10 So as an introduction, I would like to highlight the background of this event. It occurred on the night of 13 March 1967. It involved a Vickers Viscount aircraft. The aircraft crashed into the sea approximately one and a half to two and a half miles offshore near Kaisers Beach near East London and with the loss of 25 people on board. The South African Airways flight, also known as the Rietbok crash, was a scheduled passenger flight from Port Elizabeth. All 25 passengers and crew on board were killed.

20 Standard air crash investigation procedures with aviation experts were disregarded. The Minister of Transport, Mr Schoeman, Mr van Rensburg, Deputy Minister of Transport, the Secretary of Transport then and the Chief of Operations held tight control and gave conflicting reports of findings. Eyewitness accounts on land were disregarded for various reasons and discredited. The official findings of the inquiry headed by Cecil Judge Marco speculated without supporting evidence that the pilot of the plane suffered a heart

attack while on approach and the co-pilot was unable to regain control.

There is still great contention about the ultimate cause of the crash. To date the families do not believe the official report because they have so much evidence to prove questionable behavior and activity at the time of the crash. Moreover, they have been accused of being conspiracy theorists while others propagate lies that have been told and mushroomed over the almost 60 years since the accident.

10 This represents constant trauma not only by the inability to lay one's dear family member to rest with dignity but further human rights violations by accusation and disrespect. As a historical context, apartheid as you know was introduced in 1948. Professor Bruwer, who was already in 1956 with the government, became an expert on the so-called anthropology and Afro-Bantu relations in the country.

 He served the Government's Advisory Council and in 1967 he was the acting Chair of the Broederbond but he had gained a reputation as a so-called *verligter*, an enlightened person and was said to be steering the prime minister forward away from the current
20 then apartheid practices. He was beginning to doubt the future of white rule in the country. While he was a staunch supporter of the concept of separate development, he preferred to call it separate freedoms and never hesitated to criticise the government if he thought it was necessary.

He wrote the speech for Prime Minister Verwoerd that he was due to deliver before he was assassinated. His family believed Verwoerd was killed to prevent him making that speech. He attended Verwoerd's memorial service telling his sister, I am the next one. This was in 1966.

Premier John Foster, who had been in office for about six months after the assassination of Verwoerd and the foreign minister at the time, Dr Helge Miller, approached Bruwer to take up an unprecedented post as a roving ambassador to African states.

10 Professor Bruwer was on his way to discuss this post with Voster after the crash. Surprisingly, this post never eventuated.

Another passenger on board was an American ANC activist who was considered a target on the plane. The late Martin Legassic had recruited her to work for the International Defence and Aid Fund which provided financial lifelines for relatives of the ANC. Her duties were to have meetings, clandestine meetings, to find out contacts of people who needed money. A former East London mayor and apartheid security officer at the time, Donald Card, said, "That her briefcase was carrying information of great interest".

20 the time, of 12, and all I remember was the talk of finding this briefcase. So we had questionable incidents in 1967.

Talk about the location, straight away they said that the plane was found and then it was denied and soon after the crash they impounded the radio telephone tapes indicating that the pilot knew exactly where he was. We were told there were no bodies and then

there was a report of 21 bodies. Many families were called to identify their loved ones and then they were told, sorry, there is a mistake. A body was washed ashore three weeks after the crash. It was identified as being from the crash and a post-mortem was conducted on this poor body that had a headless torso. This body was buried in an unmarked grave. No families were informed. Only in 1998, after the South African Aviation Archives documents were discovered by the families, did they identify this post-mortem and were they able to match up and identify it.

10 Five weeks later, a naked body with a decomposed face was washed up at Queensbury Bay. This body was suspected to be from the Rietbok. It was claimed by the police again. Reportedly taken to the mortuary for a post-mortem but no record exists. Apparently, this body of a white male was buried in Duncan Village, a black cemetery, which never happened at that time.

 Finally, recently we discovered that a fishing boat skipper, Joe Neff, related his discovery while fishing of a skeleton floating above his nets. He radio the station. He was asked to bring the body in to the Harbour, which he did, and he had arrived in total darkness.

20 It was all to be hush-hush. This body was sent off to Cape Town for forensic identification, and he later found out it was apparently the body of an Englishman, a 23-year-old Englishman. And my goodness, my body went cold when I realised who it was. At no time were any of the families notified of these discoveries. This is not normal conduct.

The families were treated like enemies of the State. Normal process is to have the airlines have an investigator. South African Airways sent their team of investigators straight away to East London. The Chief Investigator, James Boyd, had arrived, and to his surprise, their team was given observer status. And at the end of the week, they were told that they could go home. He called his wife to say, I am on my way home, but there are shady things going on. The next morning, he was found deceased in his hotel room. His body was not admitted to the mortuary. It was sent to a Gauteng cemetery where
10 his body was cremated before identified by his loved ones and before they were notified of his death. I got to speak to his son before his son passed, and his whole life had agonised about his father's death because the urn they received had black, damp stuff in it, not like a normal ash, and according to Dad's request, it was scattered, so they never got to do forensic testing.

There was disappearing evidence in the official report, evidence of a diving team and the control tower, many things that were not included in the official document. So it comes to the TRC Commission in 1998, many of the families formed a group called
20 AFORAT, the Association of Families of the Rietbok Tragedy. It was headed by Helen Brown, who did an immense amount of work, and still groping in the dark.

Submissions were made to the TRC, but the families were referred to the Civil Aviation. They sent the submissions to Bishop

Tutu, and to their horror, they never got any reply. They only found out via a radio interview that they were not included.

We have found, so despite all this evidence, no reason was given for the failure to investigate. They did suspect the involvement of the Bureau of State Security. There has been much new information since 1998. We have official documents from the government proving that there were 21 bodies. We have many other documents proving utter secrecy and our feeling, I will not bore you with all of the much information that has been revealed. But we
10 request, we have a request for a full investigation to first of all prove that this was not normal, it was not an accident, and to prove as much as possible.

Obviously, many of the people are no longer with us. Many of the family members have passed, but the generations continue. We wish to have a correction of history. So in the absence of definitive resolution regarding the cause of the crash, there are suspicions, but I do not include anything without proof.

The circumstances of this crash have led to much speculation. The Rietbok air crash is a stark reminder of the need for
20 a comprehensive and transparent process to address all stopped TRC cases. We urge the Commission to prioritise this case to ensure the truth is revealed and that all victims receive the justice they deserve.

Time is the enemy of those involved in this case, which occurred so long ago. We are keen to make use of the scant living

witnesses. In conclusion, I make a solemn plea to Your Honor that you use your powers to protect our human rights and that of the victims by granting a heritage status to this crash site and the unmarked graves, which are currently the subject of social and commercial activity that we have begged to not go ahead.

I thank you for your time and I look forward to the outcome of this inquiry.

CHAIRPERSON: Thank you, Ms Lichter.

MS LICHTER: Thank you.

10 CHAIRPERSON: Are we ready to receive the virtual opening statement of Mr Ghanda?

ADV SEMENYA: Not yet.

CHAIRPERSON: We will take a short adjournment. Oh, he is not there.

Okay. In that case, we will receive the opening statement of Mr Semenya.

ADV SEMENYA: Chairperson and Commissioners, as evidence leaders, we find it unwise. Chairperson and Commissioners, as evidence leaders, we find it a little unwise to do an opening
20 statement, particularly because there are crucial witnesses that this Commission directs must be heard, we must obtain their statements, and we must accordingly then make a coherent strategy around these matters.

But we, however, think it useful that we have some introductory remarks about the difficulties associated with the conduct

of the work of the Commission. And I start by reminding all of us that this Commission was proclaimed and published 29 May of last year. That is a period, now that we are sitting today, longer than the original lifespan of the Commission and its work.

Now, I just want to give us context. The work of the Commission is intended to cover, and I paraphrase, any interference with the prosecution and or investigation of TRC cases. And I hazard a guess that of the 7 000-odd applications for amnesty that served before the TRC, it is only 5 000 of which were refused.

10 And I hazard a guess again that the Carlotta group may prove to be a tip of the iceberg because we have to factor those people whose number we do not know who never even bothered to apply for amnesty. We must see why it is that those cases have to date not been investigated. And as the terms of reference tell us, and I propose to read the relevant part:

 "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 TRC cases. The
20 Commission must, in relation to the period since 2003, enquire 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."

Now, we make this point with deep frustration because you would have expected that entities, particularly the State entities, and particularly the South African Police Service, and particularly the National Prosecuting Authority, would have been alive to this work, alive to the relevance, why they are mentioned [indistinct] specifically, rather, in the terms of reference themselves.

10 They would not have had to wait for anything. But what we did, we also used the rules of this Commission, in particular Rule 3.1, which I will also paraphrase, which places the responsibility on the evidence leader to collate and place evidence before this Commission. That is our primary function unless directed differently by the Chair or the policy itself points differently.

20 Now, in the discharge of our attempts at doing this work, we issued out requests for information which covered a whole plethora of individuals from two former Presidents, from some members of the NPA, all the Commissioners of the police since 2003, to date. And it is disheartening and disconcerting that as we see today, we have not received one statement from the South African Police Service, not one of all the Commissioners that have occupied various periods during the 2003 to date, not one single statement. I am now given a document dated the 9 February 2026, which I am advised we received yesterday, only yesterday. It too does not give me

statements. It promises that I will have statements of few of those indicated persons by the 20th. This is hardly helpful.

Now, if we consider that, at the very least, state actors would have been the first people to assist the work of the Commission, on the contrary, that is not happening. Now, we also issued what we call Rule 3.3 notices. By that, again, I am rephrasing, by that it is an obligation on the Commission that if there is somebody implicated in a statement of witnesses such as we have heard from the Calata Group, the duty we have is to bring it to their attention and to say,
10 look, we are giving you excerpts of statements, but, no, we will give you statements, but we will identify excerpts of those statements which make reference to you and which implicate you.

Now, trust, Chair and Commissioners, of the RFI's request for information, we only received responses of twenty percent of those issued. We also issued 3.3 statements. This is the one where we invite the implicated persons to respond. Only ten percent of those have been responded. Now, we are talking about people who occupied critical government positions from the Presidents, the Ministers, the NPA, the Chairpersons of the Portfolio Committee on
20 Justice. No response at all.

And we say it is disconcerting because you would have expected them, in particular, to be upfront and helpful. Now, we are mindful of the powers that the Commission has, in particular, under Rule 3. We can go to Rule 3.10. It says:

"The Chair has the power to call for this evidence."

We have been slow, because of a whole number of complications, to have to issue out documents of compulsion. We have also, under the regulations, the power to exercise in compelling that information to come forward. No less, we have the powers under the Commission's Act that of subpoena and compelling witnesses to come and appear before this Commission.

But the rhetorical question asked is, why do you have to compel such senior State officials to help. It is not happening. Now Chair and Commissioners, given the limited life of the Commission we
10 know we are constraint to do what we must do within a timeframe whilst the Commission is standing and alive. But for the extension or the first live of the Commission we will not be [indistinct] today. And I harbor a suspicion we might just get to an end of the second half of this Commission without discharging our responsibilities. And it would be in part because State actors do not want to help. This is at least from the distance from where I am reading the scenario.

It did not help also with our time management that we had to consider two recusal applications. That, the first time of this Commission's hearings redundant. We are left with nothing. And
20 now... (intervenes)

MALE SPEAKER: [Indistinct].

ADV SEMENYA: Two recusal applications.

MALE SPEAKER: Three.

ADV SEMENYA: Two. Yes it was my recusal and that of the Chairperson.

MALE SPEAKER: There were two. Okay it does not matter.

ADV SEMENYA: Okay. Yes. That consumed a considerable amount of time for the work of the Commission to commence. When we were about to commence 7 November of last then they started these applications. Now, we are being threatened that the two Presidents who will be bringing an application for review.

CHAIRPERSON: He had not been threatened. There has been one side... (intervenes)

ADV SEMENYA: With another threat to follow as I understand.

10 CHAIRPERSON: Yes.

ADV SEMENYA: But Chair you are correct. Already we had been served with an application for the review of the Chairperson's ruling in relation to her recusal as a Chair. But all I am saying about that is that that is also a possibility for the work of the Commission to be delayed.

I do not want to anticipate how the other review application will look like. We have considered this one that is filed is saying and for that reason we are minded to proceed with the work of the Commission until such time and unless such time a court of law tells
20 us we cannot. So we were having in mind the lineup of witnesses that would commence beyond these opening statements. And I would have to announce a little adjustment to that time table.

We were indicated to start with at least four witnesses of the Calata Group. With Mr Lekhanya Calata being the first of those to come. Logistics are now suggesting differently. Particularly with the

work and the fact that we have got a State of the Nation address tomorrow. So the thinking is to try and bring Ma'am Simelane first. But even that seems to be okay but cannot happen this afternoon.

So, Chair I am highlighting that we are going to be forced to use powers of compulsion to obtain the necessary material to enable us to discharge our function.

CHAIRPERSON: Yes.

ADV SEMENYA: Chair.

CHAIRPERSON: Okay Mr Semenya. Mr Varney, may I please come
10 to you with regard to the sequence of the witnesses you wish to lead.

ADV VARNEY: Yes.

COMMISSIONER: Am I correct that Ms Simelane will be the first to
start?

ADV VARNEY: Yes Ma'am Chair. We originally had proposed
starting with Mr Lukhanyo Calata. He was scheduled for Friday. But
given that the statements, the opening statements are now
concluded, we ask whether he might be available tomorrow but
because he is a senior journalist with a broadcaster he is tied up with
the SONA address tomorrow. So he has requested to remain on
20 schedule for Friday.

I have spoken with Minister Simelane and she has agreed to
make herself available tomorrow morning. Unfortunately she is not in
Johannesburg today.

CHAIRPERSON: Yes. So tomorrow at 09:00 we can start with Mr
Simelane.

ADV VARNEY: Ms.

CHAIRPERSON: Ms.

ADV VARNEY: As the Commission pleases.

CHAIRPERSON: Yes. And Mr Calata will then follow on Friday.

ADV VARNEY: That is correct Ma'am Chair.

CHAIRPERSON: And from there where do we go?

ADV VARNEY: We have supplied the evidence leaders with a very rough draft schedule. If my memory serves me correctly then on Monday we can commence with Jasmin Sooka a former TRC
10 Commissioner followed by Dumisa Ntsebeza. We are, we have been in discussions with Mr Ntsebeza. And he might request the Commission for permission to testify remotely. Just depending on his condition. And we will advise the Commission in due course.

CHAIRPERSON: Yes, you made the necessary application in due course.

ADV VARNEY: Indeed. If there are further witnesses I do not know if you wish me to take the Commission through them but we have supplied a rough schedule to the evidence leaders.

CHAIRPERSON: Yes.

20 ADV SEMENYA: And Commissioners, of course we are trying to keep this a little fluent. Because we are mindful that the Chair in terms of Rule 11 has the power to change the sequence if so minded and good course exist for it. But for now this is the business of the day Chair.

CHAIRPERSON: Thank you. Thank you Mr Varney.

ADV VARNEY: As the Commission pleases.

CHAIRPERSON: Yes. We have come to the end of the proceedings in respect of the opening statements. We will adjourn for the day and reconvene tomorrow at 09:00.

ADV SEMENYA: As the Commission pleases.

INQUIRY ADJOURNS TO 12 FEBRUARY 2026 AT 09:00

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

JUDICIAL COMMISSION OF INQUIRY INTO TRC

FORUM OF ORIGIN : Inquiry

CASE NUMBER : N/A

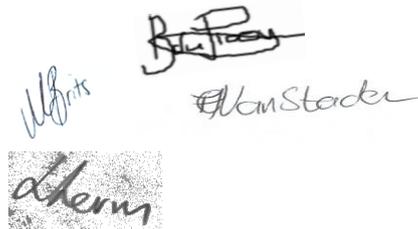
TRANSCRIBERS : M Brits, B du Plooy,
A van Staden, L Lerm

DATE COMPLETED : 2026-02-12

NUMBER OF PAGES : 97 (Including front pages)

M Brits: Page 197-226
B du Plooy: Page 227-239
A van Staden: Page 240-259
L Lerm: Page 260-291

TRANSCRIBERS :



TRANSCRIBER'S NOTE:

- *Where no information provided, names transcribed phonetically.*
- *Grammar errors types verbatim.*
- *Some speakers not positioned close to microphone. Refer to [indistinct] words and phrases.*



MzansiSA Business Solutions
Arbour Square
Cnr Melle & Juta Street
Ground Floor, Office 3
Braamfontein, 2001
TEL: 011 339 1289
E-mail: transcription@mzanzisa.com
E-mail: mzanzisa1@gmail.com