

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

HELD AT:

Sci-Bono Discovery Centre, corner Mirriam Makeba & Helen Joseph Street,
Newtown, Johannesburg

APPLICATION FOR CROSS-EXAMINATION OF ADV V PIKOLI

I, the undersigned,

LUNGELO GUMEDE

1. do hereby declare under oath as follows:

1.1. I am an adult male attorney in the employ of the State Attorney Pretoria, stationed at Salu Building, 316 Thabo Sehume Street, Pretoria. I am the attorney of record for the South African Police Service ("SAPS") in this Commission.

1.2. Due to my acquaintance with the facts of this matter and the issues involved in the present application, I am authorised to depose to this affidavit on behalf of the SAPS.

1.3. The facts deposed herein are, save where the contrary appears from the context, within my personal knowledge and to the best of my belief true and correct.

1.4. Where I make submissions of a legal nature, I do so in my capacity as

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an attorney and on advice of counsel on brief for the SAPS in this Commission, which advice I accept as being true and correct.

PURPOSE OF THIS AFFIDAVIT

2. This affidavit is filed in support of the SAPS's application for cross examination of Adv Vusumzi Patrick Pikoli ("Adv Pikoli"). The application is made pursuant to Adv Pikoli's affidavit dated 6 May 2015 and his subsequent oral testimony tendered before this Commission on 12 and 13 March 2026.
3. The application is brought in terms of Regulation 8(3) of the Regulations governing the Commission of Inquiry read with the Commission's rules on cross-examination.

BASIS FOR THIS APPLICATION

4. The evidence tendered by Adv Pikoli confirms allegations and assertions implicating the SAPS and/or its members in matters falling within the Commission's Terms of Reference.
5. In terms of its mandate, the Commission must, in relation to the period 2003, inquire into, make findings, report on, and make recommendations concerning the following allegations:
 - 5.1. whether, why, and to what extent and by whom, efforts or attempts were made to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases;
 - 5.2. whether any members of the South African Police Service or the

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National Prosecuting Authority improperly colluded with such attempts to influence or pressure them; and

5.3. whether any action should be taken by any Organ of State, including possible further investigations to be conducted or prosecutions to be instituted, where appropriate, of persons who may have acted unlawfully by –

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

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

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

ASPECTS ARISING FROM ADV PIKOLI'S EVIDENCE

6. Adv Pikoli, a former National Director of Public Prosecutions (NDPP), testified about *inter alia* the following:

6.1 The status of TRC prosecutions during his tenure;

6.2 Political interference by the high ranking government officials; and

6.3 Failed efforts to secure investigative support with emphasis placed on the influence by political figures and internal conflicts within the government agencies.

7. The relevant aspects arising from Adv Pikoli's affidavit which require further examination, and form the basis of the SAPS's request for his cross-examination relate to the allegations that:

7.1. Adv Pikoli confirms the contents of the founding affidavit of Thembisile Phumelele Nkadimeng and supporting affidavit of Anton Ackermann SC ("Ackermann") insofar as they relate to him.¹ In particular, he confirms the contents of the *Calata Group's* affidavit under the heading "*Political constraints*". He further confirms that there was political interference that effectively barred or delayed the investigation and possible prosecution of the cases recommended for prosecution by the TRC.²

7.2. It is common cause that early in 2006, Adv Pikoli had approached the then National Commissioner of Police, Mr. J Selebi ("the National Commissioner"), the DG of Justice, and the heads of the National Intelligence Agency ("NIA") and the DSO (also known as 'the Scorpions'), requesting them to nominate senior officials to assist the Priority Crimes Litigation Unit ("PCLU"). This was to enable compliance with the Prosecution Policy guidelines at the time. Adv Pikoli alleges that the SAPS and NIA never provided the PCLU with the necessary support to conduct its investigations adequately.³

7.3. It is alleged that early in 2006, the National Commissioner objected to Ackermann's participation claiming that Ackermann intended to prosecute

¹ Paragraph 13: page 5: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

² Paragraph 14: page 5: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

³ Paragraph 29: page 11: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

the leadership of the ANC. This is notwithstanding the formal denial by the NPA that no such plans were in place. Adv Pikoli advised the National Commissioner that Ackermann was appointed as the head of the PCLU under Presidential Proclamation and it was not for the SAPS to determine who should discharge the mandate given to the PCLU.⁴

7.4. Adv Pikoli proposed that Dr Ramaite, the Deputy National Director of Prosecutions (“the DNDPP”), should chair the Task Team formed pursuant to the Prosecution Guidelines. This was aimed at addressing the complaints related to Adv Ackermann and to get the Task Team working. The proposal was accepted.⁵

7.5. The Task Team met for the first time on 12 October 2006 and Adv Pikoli attended the opening session of the said meeting together with Ms. Kalyani Pillay (his adviser), the Directors General of the NIA and Justice and Mr Jafta from the Presidency. Apart from this meeting, he did not participate further in the activities of the Task Team. Adv Pikoli received reports from time to time on their activities. These reports led him to believe that the committee was functioning and securing the requisite co-operation from the other agencies which had previously been missing.⁶

7.6. Dr Ramaite reported to Adv Pikoli that at the Task Team meeting on 25 October 2006, he had received an audit report from Ackermann on all cases in the possession of the PCLU. Dr Ramaite further reported that the *Chikane* matter was discussed by the Task Team for the first time at

⁴ Paragraph 30: page 11: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

⁵ Paragraph 35: page 14: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

⁶ Paragraph 38: page 14: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

its meeting on 6 November 2006. Mr J Lekalakala of the SAPS stated that the National Commissioner believed that Rev Chikane was not interested in the prosecution of the case. Ackermann however indicated that Rev Chikane had left the matter in the hands of the NPA.⁷

7.7. In early December 2006, Adv Pikoli was informed by Dr Ramaite of the renewed contention by the National Commissioner that Rev Chikane had not been consulted. Rev Chikane had in fact been extensively consulted in relation to the proposed prosecution. Adv Pikoli personally held discussions with him during the course of interactions during 2006 and 2007. Adv Pikoli also met with him separately. Rev Chikane advised him that while he may have forgiven his perpetrators, insofar as the application of the laws of the land was concerned, the matter must take its ordinary course. If a decision was made by the prosecuting authorities he would accept that.⁸

7.8. In early 2007, as a result of the differences in approach that had developed between the NPA and the SAPS, NIA and DoJ, Adv Pikoli informed the National Commissioner and the Directors General that there was a serious misunderstanding, he resolved to approach the Minister of Justice and request her guidance. Pending such response the functioning of the Task Team was compromised by the uncertainty and it held no further meetings until 8 August 2007.⁹

⁷ Paragraph 40: page 15: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

⁸ Paragraph 41: page 16: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

⁹ Paragraph 44: page 17: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

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- 7.9. Towards the end of January 2007 Ackermann and Adv Mthunzi Mhaga (also of the PCLU) reported to Adv Pikoli that they had met with Rev Chikane on 22 January 2007 and that he had reaffirmed his attitude, namely that he was not against a prosecution and that the matter should take its ordinary course. In the light of this confirmation Adv Pikoli wrote to the legal representatives of Messrs Otto Smith and van Staden on 25 January 2007 and informed them that the matter would now proceed and he instructed the PCLU to act accordingly.¹⁰
- 7.10. During the course of the next few months that followed, the legal representative of Messrs. Otto Smith and van Staden, Vlok and van der Merwe, held detailed negotiations with Ackermann and members of the PCLU in regard to a plea and sentencing agreement.¹¹
- 7.11. Adv Pikoli would have preferred a full prosecution in this case because it would have produced greater truth and accountability, however there was strong political resistance to this prosecution and the pursuit of the other political cases. It was clear to Adv Pikoli that the government, and in particular the then Minister of Justice, did not want the NPA to prosecute those implicated in the Chikane case. This was due to their fear of opening the door to prosecutions of ANC members, including government officials.
- 7.12. Moreover Adv Pikoli could not rely on the police to investigate this case, and the other political cases, thoroughly. Therefore, a plea and sentence bargain was in his view the most appropriate compromise in the

¹⁰ Paragraph 45: page 17: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

¹¹ Paragraph 55: page 22: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

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circumstances.¹²

7.13. Adv Pikoli reminded the Minister that his predecessor had satisfied himself that there was no basis for the leadership of the ANC to be investigated and he had then briefed the then Minister of Justice, as well as the President. Adv Pikoli also advised the Minister that all the dockets relating to the TRC cases, which had been stored at the Office of the Director of Public Prosecutions (DPP) in Pretoria, had been handed over to the SAPS in early and mid-2004. In his capacity as then DG of Justice, Adv Pikoli was actually present in the office of the DPP when representatives from the SAPS collected the said dockets.¹³

8. Further allegations that require examination are found in Adv Pikoli's oral testimony, wherein it is stated that:

8.1. The Department of Justice was the one government department that had to facilitate the work of the TRC. So the logistical arrangements and administrative arrangements were then the responsibility of the Department of Justice. And then also the expectation was that following the reports of the Commission itself and the recommendations that would have been made in that report, that again the Department of Justice played a leading role in ensuring the implementation of the recommendations.¹⁴

¹² Paragraph 60: page 23: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

¹³ Paragraph 72: page 27: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

¹⁴ Transcript 12 March 2026: page 11 from lines 19 to page 12 line 1

- 8.2. Adv Pikoli explained that government had taken a decision that the work of government needed to be grouped to ensure that there was proper coordination of the work and to ensure cooperation and collaboration amongst government departments. So the work or the mandate of the departments that formed part of the criminal justice value chain, meant that there was a need to work together in a collaborative fashion to ensure that there is proper coordination and that they strive for an integrated criminal justice system.
- 8.3. This is based on the principles of Cooperative Governance, which was already in the Constitution. It was ensuring that the work of government is structured in a manner that will facilitate that cooperation. So it was following what the Constitution required in terms of Chapter 3.¹⁵
- 8.4. But the dilemma being having just emerged from the conflict of the past when you had the defenders of apartheid on one side and members of the liberation movement on the other side which led to serious violence in South Africa, waging of the armed struggle, and the brutal response of the apartheid government at the time, that we still had fragile peace in South Africa. This was a matter of serious national concern, government needed to address this reality and find a way of dealing with it as a country.¹⁶
- 8.5. Adv Pikoli conceded that with the benefit of hindsight and some can argue with foresight it will not need hindsight, they were dealing with a

¹⁵ Transcript 12 March 2026: page 14 from line 15 to page 15 line 21

¹⁶ Transcript 12 March 2026: page 22 lines 4 to 11

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novel situation and for him everything had to be done within the framework of the law. But as things turned out, it was clear the colleagues he was working with did not share his thinking.¹⁷ The situation was fragile, so to think that by 2003 everything would be normal, it would have been naïve to think so. The approach was rather to try do whatever that can be done to make sure that the country does not go back.¹⁸

8.6. It was then the responsibilities of the DGs to then try to interpret and execute or bring to reality what the President announced in parliament in 2003.¹⁹ Adv Pikoli stated upfront that he fully agreed with what the President said in 2003.²⁰ He was fully committed and drove that process from his position as the Director-General of the Department of Justice, having to give effect to policy positions of government.²¹ They were trying to find creative ways to give effect to the President's statement.²²

8.7. Based on the evidence that was led before the Commission when Ackermann testified as well as when Adv Ngcuka testified that the DSO declined to appoint investigators and after the SAPS was approached, the Head of Detective Services said that the NPA should get a written instruction from the President if they wanted SAPS to investigate. Adv Pikoli testified that he was not aware of these developments while he

¹⁷ Transcript 12 March 2026: page 42 lines 9 to 19

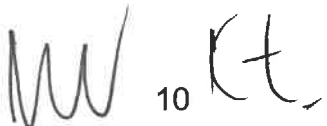
¹⁸ Transcript 12 March 2026: page 46 lines 11 to 20

¹⁹ Transcript 12 March 2026: page 36 lines 6 to 15

²⁰ Transcript 12 March 2026: page 40 lines 19 to 25

²¹ Transcript 12 March 2026: page 41 lines 1 to 3

²² Transcript 12 March 2026: page 66 lines 10 to 12

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was DG of Justice.²³

8.8. It appeared to Adv Pikoli that the former apartheid generals had influence with senior members of the Executive who in turn were placing pressure on him. This was amplified by the resistance coming from SAPS in the form of the then National Commissioner and also supported by the Department of Justice and the National Intelligence Agency. Adv Pikoli added that it appeared to be coming from the Executive because the instruction came from the Executive.²⁴

8.9. It is quite evident that all these imaginations were aimed at ensuring that no generals of apartheid South Africa would be prosecuted and if they are not prosecuted, then obviously that dossier which was being compiled elsewhere with the collusion of a member of SAPS, Brits, and the former National Commissioner, would then never see the light of day.²⁵


8.10. In relation to what led to the removal of TRC dockets, Adv Pikoli testified that at the time he was still at the Department of Justice and then by virtue of their discussions at the cluster, the National Commissioner, would be talking about the NPA wanting to prosecute the President together with the ANC members who were denied amnesty by the TRC. This became a source of tension between the NPA and the police in

²³ Transcript 12 March 2026: page 25 from line 23 to page 26 line 5

²⁴ Transcript 13 March 2026: page 84 lines 2 to 15

²⁵ Transcript 13 March 2026: page 98 lines 3 to 9

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particular around this issue which then led to suspicions about the motive of the NPA.²⁶

8.11. Dockets were taken away to the SAPS. Adv Pikoli was present when this was happening at the offices of the DPP, Pretoria in his capacity as the Co-Chair of the cluster.²⁷ He finds it reasonable to infer that these are the dockets that were a source of tension and controversy in the office of the DPP in Pretoria, but he cannot confirm or verify that.²⁸

8.12. Adv Pikoli confirmed the understanding that it was the prosecutor led dockets or investigations, during the time of the DSO, (the Scorpions) because that was the methodology of the DSO, what they used to refer to as the troika principle, intelligence driven and prosecution led investigations.²⁹

8.13. Adv Pikoli testified in respect of what SAPS was to do with the dockets, he would not know as to what was in the mind of his predecessor but that it could have been out of frustration and also to show that he had closed the ANC matters. So Adv Pikoli thinks he was washing his hands off to say look, you can take this because insofar as the 37 ANC members, he is *functus officio*.³⁰

8.14. In respect of the hand over and if dockets were just handed over lock, stock and barrel, with no forensic investigation, Adv Pikoli's recollection

²⁶ Transcript 12 March 2026: page 28 lines 11 to 22

²⁷ Transcript 12 March 2026: page 29 lines 5 to 8

²⁸ Transcript 12 March 2026: page 29 lines 13 to 16

²⁹ Transcript 12 March 2026: page 30 lines 13 to 18

³⁰ Transcript 12 March 2026: page 31 lines 5 to 16

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was that when he was there, there was no auditing. He does not know whether it had already been done and has no knowledge of that.³¹

8.15. From Adv Pikoli's recollection, he believes that Commissioner Tim Williams would have been there when these dockets were removed from the offices of the Director of Public Prosecutions, Pretoria.³²

8.16. Adv Pikoli testified that it was the Intelligence Services, SAPS, and DOJ who were proven to be an obstacle, even at the time when the DSO or the PCLU required investigators to assist them in the matter. There was this obscene obsession to get rid of Ackerman, because every time the matter would come up about working together, it would be put as a condition for the collaboration.³³ SAPS was an obstacle because it was in favour of eliminating private prosecutions and civil litigation.³⁴

8.17. Adv Pikoli decided that in order to eliminate the perceived "*Ackermann obstacle*" and knowing Ackermann to be abrasive and the cause of friction, appointed Dr Ramaite to whom Ackermann reported, tactically for things to proceed, to attend those meetings. Dr Ramaite would then be the one to take the lead in the discussions so that it was not Ackermann who was the face of the post-TRC prosecutions or otherwise that animosity would have continued, which would be a course for further delays.³⁵

³¹ Transcript 12 March 2026: page 31 lines 18 to 23

³² Transcript 13 March 2026: page 166 lines 2 to 4

³³ Transcript 12 March 2026: page 76 lines 10 to 25

³⁴ Transcript 12 March 2026: page 77 lines 18 to 25

³⁵ Transcript 13 March 2026: page 153 lines 2 to 10

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8.18. Furthermore, Adv Pikoli confirmed that the lack of investigative support was really the nub of the matter and thus without investigation officers, matters that required investigation would not proceed.³⁶ His approach was always that of tactical flexibility, without compromising the independence of the NPA. As part of exercising that tactical flexibility, he felt that as a demonstration of his willingness to collaborate and cooperate and thus did not feel, at a personal level, scared to have open discussions with members of the executive around the TRC issues.³⁷ They were dealing with a matter that was not your run-of-the-mill matter.³⁸

8.19. Mr Koopedi from the NIA showed willingness to say that they were prepared to go through volumes of records in all cases. NIA might have knowledge of facts not known by other members of the Task Team to put things in a proper perspective. This would enable availability of the information that might not have been in possession of the NPA to assist them in taking appropriate decisions.³⁹

8.20. Adv Pikoli reached a tipping point when there was one view or interpretation by the DG's and the National Commissioner on one hand, and the understanding by the NPA of what was meant in the guidelines regarding the roles to be played by the DG's. This was particularly in reference to the question of the NPA and its independence.⁴⁰ The 'penny

³⁶ Transcript 13 March 2026: page 4 lines 15 to 20

³⁷ Transcript 13 March 2026: page 18 lines 3 to 10

³⁸ Transcript 13 March 2026: page 18 lines 16 to 24

³⁹ Transcript 13 March 2026: page 39 lines 8 to 16

⁴⁰ Transcript 13 March 2026: page 57 lines 6 to 11

finally dropped with Adv Pikoli towards the end of 2006.⁴¹

8.21. The misunderstanding arose from the side of the DGs of other Departments in that they saw themselves as entitled to make recommendations before there could be a decision on the part of the NPA.⁴²

8.22. Adv Pikoli was disappointed that there was a general expectation on the part of the DOJ, SAPS, and NIA that there would be no prosecutions and that he was expected to play along. His conscience and oath of office would not allow that.⁴³

8.23. It was stated time and time again that the *Chikane* matter, was ready for trial in 2004 because there was no need for investigations on this particular matter. So it did not fall into the category of those matters that the NPA required investigators.⁴⁴

8.24. Adv Pikoli confirmed that the assumption he made at that time was that the committee was functioning and securing the requisite cooperation from the other agencies. However, in due course he discovered that cooperation was not forthcoming.⁴⁵

8.25. The NPA needed somebody who would be their political champion in terms of the mandate of the NPA, particularly to protect and insulate it

⁴¹ Transcript 13 March 2026: page 58 lines 14 to 19

⁴² Transcript 13 March 2026: page 74 lines 9 to 20

⁴³ Transcript 13 March 2026: page 76 lines 15 to 25

⁴⁴ Transcript 13 March 2026: page 155 lines 19 to 23

⁴⁵ Transcript 13 March 2026: page 34 lines 17 to 22

from the politics of the day. That would enable the NPA to focus on its stated mandate being instituting criminal proceedings on behalf of the State. This is the point that Adv Pikoli made in a meeting with the President and the Minister of Justice.⁴⁶

9. When stripped to the bone of relevance within the framework of the Commission's mandate, other than mentioning the National Commissioner, Adv Pikoli makes broad allegations implicating members of the SAPS in the following respects:

9.1. The former apartheid generals were able to exercise undue influence over senior members of the Executive who in turn were placing pressure on Adv Pikoli. This was amplified by the resistance coming from SAPS in the form of the then National Commissioner. **It is thus important to understand what is meant by this amplified resistance.**

9.2. It was the Intelligence Services, SAPS, and DOJ who were proven to be an obstacle, even at the time when the DSO or the PCLU required investigators to assist them. SAPS was an obstacle because it was in favour of eliminating private prosecutions and civil litigation. **It is therefore important to understand what is meant by the SAPS being an obstacle and how that was interpreted as political interference.**

9.3. Adv Pikoli could not rely on the SAPS to investigate political cases thoroughly. The lack of investigative support was the nub of the problem because without investigation officers, matters that required investigation could not proceed. **This allegation needs to be tested as against the**

⁴⁶ Transcript 13 March 2026: page 91 lines 6 to 12

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evidence of General Jacobs to the effect that investigators were being appointed to deal with specific matters on behalf of the SAPS within the Interdepartmental Task Team (“the ITT”).

- 9.4. Adv Pikoli was disappointed that there was a general expectation on the part of the DOJ, SAPS, and NIA that there will be no prosecutions and that he had to play along. **It is important to understand what inspired such an expectation, how and which members of the SAPS contributed to such an expectation.**

CROSS EXAMINATION FOCUS

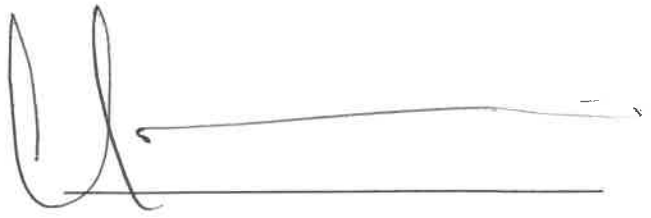
10. Flowing from Adv Pikoli’s evidence, the following areas of contention will then be addressed during the intended cross examination:
- 10.1. The various reasons why the PCLU was unable to pursue any TRC cases;
 - 10.2. The importance of General Jacobs statement in either putting the evidence of Adv Pikoli into its proper context, and rebutting many aspects of his evidence;
 - 10.3. The *Chikane* matter and its relation to investigation of other matters;
 - 10.4. The minutes of the meetings of the ITT, the progress made and what led to its collapse;
 - 10.5. The steps taken in the ITT in respect of the appointment of investigators by SAPS;

- 10.6. Based on his assumptions, when and how did Adv Pikoli discover that cooperation from the other agencies was no longer forthcoming in the ITT;
 - 10.7. The implication of Adv Pikoli's request that the NPA needed a political champion, to protect it from the politics of the day;
 - 10.8. The lack of cooperation and collaboration amongst government departments caused by Ackermann and the lack of regulations when dealing with TRC cases;
 - 10.9. Establishing further whether Adv Pikoli's interaction involved the Minister of Safety and Security in respect of the alleged lack of cooperation coming from SAPS; and
 - 10.10. The effects intended to widen the ambit of opportunities to reconcile should be seen as reconciliation efforts, as opposed to being efforts at stopping investigations of TRC cases.
11. It needs to be stated that the issues identified as focal point(s) for cross examination above are not intended to constitute an exhaustive list, but rather to assist the Commission in the exercise of its discretion in considering this application.

CONCLUSION

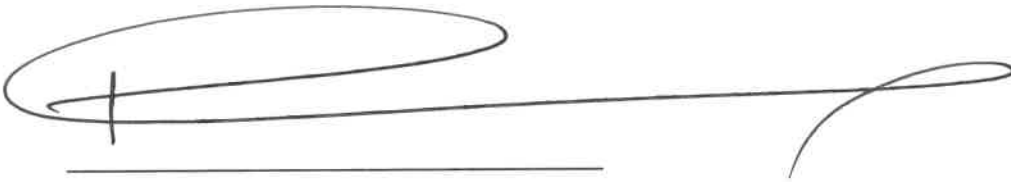
12. Based on the above, it is submitted that it is in the interest of the SAPS that the veracity of the allegations made by Adv Pikoli be tested through cross examination and put into context to assist the Commission in its findings.





DEPONENT

THUS SIGNED AND SWORN TO before me at Pretoria on this 4th day of **MAY 2026**. The deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to take the prescribed oath and considers the oath to be binding on his conscience.



COMMISSIONER OF OATHS

FULL NAMES:

NYIKO LUCKY NKUNA

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