

**IN THE COMMISSION OF INQUIRY INTO STOPPED TRC
INVESTIGATIONS AND/OR PROSECUTIONS**

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CALATA GROUP
SIMELANE CROSS-EXAMINATION**

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

TO: ADV MENZI SIMELANE

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INTRODUCTION AND ESTABLISHMENT OF THE COMMISSION

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

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

NOTICE IN TERMS OF RULE 3.3

5. This notice is issued in terms of Rule 3.3 of the Rules of the Commission, read with the Regulations made under Government Notice R.278 of 2025.
6. The Commission's Evidence Leaders intend to present the evidence of one or more applicants in the Calata case, and any person who in the opinion of the Evidence Leaders possesses information that relates to the paragraph **Error! Reference source not found.** allegations against you and is relevant to the Commission's work.
7. The specific date and venue for the hearing at which such evidence will be presented will be communicated to you in due course.
8. Below is an extract from the Calata matter's founding affidavit, with corresponding paragraph numbering, which implicate, or may implicate, you in allegations regarding efforts or attempts to halt or suppress the investigation or prosecution of TRC matters. Further details of the Calata proceedings, including the said affidavit, are available on the Commission's website at www.trc-inquiry.org.za.

PARTICULARS OF IMPLICATION

“The knives are out for Pikoli

260. Shortly after the Chikane plea and sentence agreement had been confirmed in court, a newspaper article appeared in the Rapport newspaper of 19 August 2007 in which it was claimed that the NPA was preparing to prosecute ANC leaders. According to Pikoli, the claim was made on the basis of a note that Ackermann had prepared more than four years previously, when he first looked at the universe of possible cases. That note was forged to suggest it was made recently and that Ackermann was targeting the ANC leadership. A copy of this newspaper article is annexed hereto marked **FA36** (VPP4 at p211). The NPA responded by way of a press statement dated 21 August 2007 in which the allegations made in the Rapport were denied. A copy of this press statement is annexed hereto marked **FA37** (VPP5 at p213).

261. At this time, the then Director-General of the Department of Justice, Menzi Simelane, had approached Pikoli and raised concerns about Ackermann's handling of the TRC cases. He asked Pikoli to relieve Ackermann from his duties in respect of those cases. Pikoli declined to do so.

262. After the newspaper article was published, Pikoli was summoned to a meeting of the subcommittee of the Justice, Crime Prevention and Security (JCPS)

Cabinet Committee on Post TRC matters, which was held on 23 August 2007. This meeting was attended by several cabinet ministers, directors-general and

Selebi. Cabinet Ministers included the Minister for National Intelligence

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Services Ronnie Kasrils, Minister Mabandla, and Minister Skweyiya amongst others.

263. The fact that there was a special Cabinet Committee on the post TRC cases speaks volumes. The existence of such a high-level committee devoted to a particular class of criminal cases pointed the importance of these cases to Cabinet, and that the cases had become the subject of political intervention.

264. Pikoli's account of this meeting in his Nkadimeng 2 affidavit (FA22), is that the those at the meeting immediately demanded answers from him about TRC prosecutions.

264.1 According to Pikoli, Selebi said to him that the "gloves are now off" and that he was "declaring war" on him. In response Pikoli told Selebi: "for once in your life can you tell the truth and shame the devil".

264.2 Those present were particularly concerned that the NPA was instituting an investigation into certain members of the SAPS, in relation to the fabricated Ackermann letter.

264.3 Minister Mabandla told Pikoli to stop this investigation, to which Pikoli responded that the investigation will proceed.

264.4 Pikoli explained to the meeting that:

264.4.1 *the NPA was bound by law to continue with prosecutions of individuals who did not apply for or who were refused amnesty.*

264.4.2 *the NPA was actively preparing for those prosecutions and that it should not be stopped from doing its job.*

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264.4.3 *it was his role as the NDPP to decide who would be charged.*

265 *On 28 August 2007, Pikoli received a faxed letter (dated 8 August 2007) from the Minister, which is annexed hereto marked **FA38** (VPP6 at p214). She referred to the meeting held on 23 August 2007 and noted that SAPS held a different view in respect of the forgery of certain NPA documents. She complained that she had not been advised of the decision to investigate and wanted to know the basis thereof.*

266 *Pikoli responded to the Minister's letter by way of a letter dated 29 August 2007, a copy of which is annexed hereto marked **FA39** (VPP7 at p215). In this letter Pikoli referred to the 23 August 2007 meeting:*

“which I considered to be most unpleasant. Despite the information I put before the committee, I am both surprised and disappointed to see that I now stand accused of misleading alternatively having lied to the subcommittee members.”

267 *Pikoli confirmed that there was no investigation by the NPA “against the 37 ANC leaders including the President of this country, contrary to the assertions of the National Commissioner of Police”. He added that it is:*

“clear that my account of the position as it relates to the NPA’s handling of the post TRC matters has been completely ignored.”

268 *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 briefed the then Minister of Justice, as well as the President. Pikoli also advised the Minister that all the dockets relating to the TRC cases, which had been stored at the Office of the DPP in Pretoria, had been handed over to the SAPS in 2004.*

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Pikoli in his capacity as then Director General of Justice was actually present in the office of the DPP when representatives from the SAPS collected the dockets.

269 *Pikoli concluded his letter by requesting an urgent meeting with the Minister. Pikoli also requested an opportunity to appear before the National Security Council “to give a true account of this issue”.*

270 *The Minister did not respond to Pikoli’s requests, and the meetings never took place. On 23 September 2007 Pikoli was suspended from office by President Mbeki. Shortly after his suspension he learned that Ackermann had been relieved of his duties in relation to the TRC cases.*

271 *According to Ackermann, he was summoned to the office of Adv Mokotedi Mpshe, who had been appointed acting NDPP. Mpshe advised Ackermann that*

he was relieved of his duties in relation to the TRC cases with immediate effect. In his affidavit (**FA8**), Ackermann asserted that he had “no doubt that Adv. Mpshe received a political instruction to remove me from these cases.” Ackermann advised Mpshe that removing him from the TRC cases “would not make the cases go away.” That statement has also proved to be prescient.

272 Writing in his 2015 affidavit in *Nkadimeng 2* (**FA22**), Pikoli observed the following:

“I have little doubt that my approach to the TRC cases contributed significantly to the decision to suspend me. It is no coincidence that there has not been a single prosecution of any TRC matter since my suspension and the removal of the TRC cases from Advocate Ackermann.

The political interference or meddling that I have set out in this affidavit is deeply offensive to the rule of law and any notion of independent prosecutions under the Constitution. It explains why the TRC cases have not been pursued. It also explains why the disappearance and

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murder of Nokuthula Simelane was never investigated with any vigour and why the pleas of her family and her representatives were ignored.”

273 Ackermann concluded similarly in his 2015 affidavit (**FA8**):

“There is little doubt in my mind that the investigation and prosecution of the TRC cases have been effectively stopped by machinations that took place at a level above that of the NPA. Such interference serves to explain why the Simelane matter, as well the bulk of the TRC cases, have not been seriously investigated or prosecuted.

In so doing the rule of law has been undermined and a deep injustice has been committed against the family of the late Nokuthula Simelane, as well as the families of other victims of apartheid era crimes.”

274 Now with Pikoli and Ackermann out of the way, government was in a position to appoint compliant officials to lead the NPA and take charge of the TRC cases. Going forward the TRC cases were now firmly frozen and no amount of lobbying and agitating by families and their representatives would move the new leadership of the NPA to act.

Ginwala Enquiry

275 The years following the suspension from office of Pikoli and the removal of Ackermann from the TRC cases were marked by an almost total absence of activity on the TRC cases.

276 On the same day that Pikoli was suspended on 23 September 2007, the President announced the creation of the Ginwala Enquiry into the fitness of Pikoli to hold the office of the NDPP in terms of section 12(6)(a) of the NPA Act. Dr Frene Ginwala was appointed on 28 September 2007 to head the inquiry.

277 According to Dr Ramaite, then the Acting NDPP, when the President established the Ginwala Commission, “the SAPS declined to further investigate the matters,

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pending the conclusion of the Commission.” This was disclosed in his 31 January 2013 letter to Thembi Nkadimeng (**FA26**). The reference to a decision to refuse to “further investigate” is a misnomer since the SAPS had already refused to investigate the TRC cases as far back as 2003. There was no legal or other

basis for the SAPS to continue refusing to investigate the TRC cases pending the outcome of the Ginwala Enquiry.

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

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

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

281 *Dr Ginwala was moved to say in her finding that:*

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*This complaint also touches very closely on the **constitutional guarantee of independence of the NPA** to prosecute or not to prosecute, and to do so without fear, favour or prejudice. (Bold added).*

282 Nonetheless Dr Ginwala did not take this burning issue further as the government abandoned its complaint against Pikoli in respect of the TRC cases. The likely reason was to curtail closer examination of the role of government in relation to the cases. A copy of the Ginwala Commission Report dated 4 November 2008 can be made available on request. The extracts of her findings on the TRC cases complaint are annexed hereto marked **FA40**.

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

284 Dr Ginwala reserved her harshest criticism for Adv Menzi Simelane, who at the time had been Director General of the DOJ since June 2005. She found that he had given contradictory evidence and had deliberately withheld important information from the Commission, thereby attempting to mislead it. She also impugned his conduct as Director General of the DOJ on various grounds.

TRC cases remain stuck

302. In the PCLU's presentation of its performance for the financial year of 2007 – 2008 to Parliament's Justice and Constitutional Development Portfolio Committee in March 2007, the following was noted by Ackermann in slide 8 on TRC prosecutions:

- *"Only partial success was achieved **due to intervening factors beyond the control of the unit.**"*
- *"Sixteen cases have been identified for investigation and possible prosecution." (Bold added).*

303. *The cryptic reference to "intervening factors beyond the control of the unit" could only have been the political interference alluded to above and to be described in detail below. The sixteen cases were not identified and none of these cases were taken forward. A copy of the presentation is annexed hereto marked **FA44**.*

304. *With the political suppression of the TRC cases now in full swing, there was a hiatus of activity for several years, notwithstanding the agitation of families for action. The only notable development in this period was the disappearance of the investigation dockets in the Nokuthula Simelane and Cradock Four cases.*

305. *It can be safely assumed that little or no work was carried out by the NPA, SAPS or DSO on the TRC cases during 2008. Acting NDPP Mpshe had already relieved Ackermann of his responsibilities in respect of the TRC cases. He could hardly be expected to champion the TRC cases going forward, and indeed he did not. Although Ackermann was still the head of the PCLU he was no longer permitted to work on the TRC cases, and the files were left largely unattended. He retired from the NPA in 2013. In any event, at that stage, no investigator within state structures would touch the cases.*

306. Macadam records in his affidavit filed in *Rodrigues (FA5)*, that in early 2009, Mpshe summoned him to his office and showed him a letter written by SAPS indicating that it was withdrawing from the ITT.

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306.1 Presumably the SAPS took the view that the TRC cases were dead in the water and there was no point in serving on the task team which in practice was doing no work. In addition, following the judgment of Legodi J, the ITT no longer enjoyed a legal basis with the setting aside of the amendments to the Prosecution Policy in December 2008.

306.2 Since the SAPS had not been investigating the TRC cases their withdrawal did not mean much. However, according to Macadam it would mean that going forward, the TRC matters would again not be investigated because a decision had already been taken to disband the DSO.

306.3 Mpshe asked Macadam to negotiate with SAPS and try to get them to agree to investigate the cases. Mpshe also told Macadam to take over the TRC cases.

307. It is hardly surprising that Macadam concluded his 2018 affidavit with this blunt statement: “[t]hese documents speak for themselves and go a long way in explaining why from 2003 the PCLU constantly struggled to have TRC cases investigated.”

308. Macadam approached Ackermann for advice, and he disclosed that he had previously closed some matters which had not required investigation and handed over a list of some ten cases. Macadam attached to his affidavit as annex RCM6 (at p821) a trail of emails between himself and various roleplayers in his attempts to get the remaining TRC cases investigated. He initially met with Rayman Lalla, then Divisional Head of the Detective Service



of SAPS, who informed him that the National Commissioner had decided that the cases must be handled by the DPCI.

309. On 18 May 2009, Macadam sent the following email to Deputy NDPP, Adv

Willie Hofmeyr (RCM6 at p821), at a time when there was an expectation that Hofmeyr was about to be appointed the new head of the DPCI:

"I met this morning with Commissioner Lalla concerning the appointment of SAPS investigators to investigate the TRC cases where victims have asked the NPA to look at prosecutions. **We have been taking quite a beating due to the fact that nothing has been done on these matters for a number of years and in fact, in certain cases, the victims are threatening us with mandamus applications.** In this regard, Commissioner Lalla asked me to provide him with the names of three/four investigators who had the necessary experience. **We are only looking at a small number of cases, plus minus nine.** Obviously, no progress at all will be made if the investigators do not have previous knowledge of the relevant Apartheid security structures and role players therein.

The only persons I could think of off-hand, were CSI Marion and three/four of his KZN DSO investigators, who were previously involved with the Goldstone Commission and ITU. All these persons have indicated their willingness to transfer to SAPS. **Commissioner Lalla indicated that the TRC investigations would constitute a special tasking and the investigators would be permitted to finalise these cases before taking on other commitments.** He also indicated that he would pay the costs of the investigations from his budget. This would ensure that they could deal with these matters irrespective of whether they are located in DPCI or any other police structure. He asked me to communicate directly with you on this issue." (Bold added).

310. However, Hofmeyr was not appointed to head up the DPCI, so Macadam had to approach the SAPS Commissioner again. On 1 July 2009 he wrote an email (RCM6 at p822) to Superintendent Colla

Bezuidenhout at the SAPS headquarters seeking a meeting with the Commissioner to discuss the TRC cases. He advised in the email:

*“We are under intense pressure and have been called upon to report on progress to the Minister and the Justice Portfolio Committee. **The one matter which requires investigation prescribes on 12 September 2009 and this case must 11***

be fully investigated and the family afforded an opportunity to exercise their right to a private prosecution before the crime prescribes.” (Bold added)

311. Macadam was told to meet with Commissioner Anwar Dramat, the newly appointed Head of the DPCI. He then made a number of unsuccessful attempts to secure a meeting with Dramat. During this period, the unidentified case that was due to prescribe on 12 September 2009, prescribed without being taken further. It can be safely assumed that a large number of other crimes associated with the TRC cases prescribed during this period.

312. I am advised that at this time the family of the late Nokuthula Simelane and their representatives were working behind the scenes to persuade the Minister of Police to appoint investigators to take on the TRC cases.

313. Ultimately Macadam met with Assistant Commissioner Godfrey Lebeya on 26 November 2009 where the issue of conducting investigations was discussed resulting in Macadam addressing a letter to

Lebeya on 18 January 2010, which is attached to Macadam's affidavit (FA5) as annex RCM7 (at p826). The letter is reproduced below:

"My letter dated 13 July 2009, addressed to Deputy National Commissioner Dramat and Divisional Commissioner Lalla, and our meeting of 26 November 2009 have reference.

The issue related to the appointment of investigators to investigate the 11 matters identified by the NPA, which were itemised in my letter of 13 July 2009. Subsequently, the Acting National Director of Public Prosecutions declined to prosecute in the Lubowski matter and consequently, only the remaining 10 cases on the list required attention.

Senior Superintendent Bester of your office attended our meeting and informed you that he was in possession of a number of further dockets which he felt also required investigation. On 6 December 2009, I had a meeting with Senior Superintendent Bester and established that these dockets related to cases against the Liberation Movements in respect of which a decision was 12

taken in 2004 by the then National Director not to prosecute. It should be noted that in the main, all the suspects implicated in the dockets had applied for and received amnesty. I therefore informed Senior Superintendent Bester that there was no basis upon which these cases could be reopened.

Consequently, only the remaining 10 cases on the list require attention. Since you raised the sensitivity of the matters with me, the National Director of Public Prosecutions was given a full written briefing on the matters. I had a meeting with him today and he indicated that SAPS should in fact investigate all the matters which required investigation. The matters should be referred to my office once the investigations have been concluded. Should you require any guidance as to how the matters should be investigated, you are at liberty to approach me for any such assistance which you might require.

Given the nature of the cases, it may be desirable that we meet to discuss the issues in person and in this regard, I would be grateful if you could indicate when you would be available to meet with me." (Bold added).

314. *Senior Superintendent Louis Bester was appointed to oversee the investigations of the ten remaining TRC cases. It appeared that Bester was particularly interested in pursuing cases against members of the*

former liberation movements. As it transpired, he made no progress in the cases against former apartheid security officers and operatives.

315. *On 1 December 2009, President Jacob Zuma appointed Adv Menzi Simelane as NDPP. This was announced in a government press release dated 30 November 2009, ironically titled “Simelane fit to hold office.” The appointment was made notwithstanding the damning findings made against him by the Ginwala Enquiry.*

316. *While he was DOJ Director General, Simelane had pressed Pikoli to remove Ackermann from the TRC cases. I can only speculate, but I believe that the probabilities are high that it was also Simelane who asked Acting NDPP*

Mpshe to remove Ackermann from the TRC cases, following the suspension

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of Pikoli. The arrival of Adv Simelane at the helm of the NPA was to doom the TRC cases to further neglect.

317. *According to Macadam, one of the first steps taken by Adv Simelane was to instruct him to oversee various investigations of corruption cases being conducted by the DPCI in the Northern Cape. He thereafter appointed*

Macadam to represent the NPA in two civil matters where decisions of the NPA not to prosecute international crimes (known as the Zimbabwe Torture Docket case) were challenged. Macadam was also deflected with cases

in which complaints had been made against the NPA for failing to prosecute current and former heads of state for crimes against humanity. This workload effectively prevented Macadam from returning to the TRC cases, but he nonetheless opened more cases “due to representations being received in new matters.”

318. *An example of the neglect was the failure of both the DOJ and the NPA to orchestrate the reconvening of an Amnesty Committee to rehear the amnesty applications of Martin van Zyl and Johannes Koole in the PEBCO 3 matter, as had been ordered by the High Court in 2009. The NPA and DOJ jointly arranged the withdrawal of charges against Van Zyl and Koole, pending the outcome of the reconvened Amnesty Committee, which they never established, thereby guaranteeing impunity for the two suspects who went to their graves without facing justice.*

319. *The NPA Annual Report 2009/10 noted that the TRC cases had to be investigated before prosecutorial decisions could be made but that “since 2003” it had “struggled to secure the necessary cooperation in this regard”:*

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*“TRC cases: The PCLU is required to advise the NDPP in making decisions whether or not to prosecute in cases arising from the TRC process. Matters need to be fully investigated before any final prosecution decision can be made. **Since 2003, the NPA has struggled to secure the necessary cooperation in this regard.** With the establishment of the DPCI, the*

responsibility for such investigations was transferred to this unit. **The PCLU had to recommence its negotiations de novo. Currently, the DPCI has indicated that it will conduct the necessary investigations, but only after the conclusion of the 2010 FIFA World Cup, due to the fact that it has a number of special responsibilities in connection with this event.**” (Bold added).

320. The relevant pages from this annual report are annexed hereto marked **FA45**. The full report can be provided on request. It is noted that the DPCI indicated that it would not look at the TRC cases until after the 2010 FIFA World Cup, which only concluded on 11 July 2010. However, even after the World Cup there is little evidence that the TRC cases were taken forward.

321. It is significant that this was the last mention of the TRC cases in the NPA’s annual reports until 2016, which reflects the general neglect of these cases during those years. There were only references to the work of the NPA’s Missing Persons Task Team (**MPTT**), which had done pioneering work locating the graves of persons killed during apartheid, exhuming and identifying the remains, and facilitating their reburial. The MPTT is not involved in the prosecution of cases.

322. Adv Menzi Simelane appeared before the Justice Portfolio Committee on 12 April 2010 where he confirmed that the NPA was not prosecuting any TRC cases. The minutes, a copy of which is annexed hereto marked **FA46** reflect the following:

“Adv Simelane said that there were no cases that the NPA was currently prosecuting regarding post TRC matters. The reason being that the dockets were still with the police for investigation.”

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323. *The following year, Adv Simelane appeared before the Justice Portfolio*

Committee on 20 March 2011 to discuss the NPA’s Strategic Plan for 2011.

The minutes reflect the following discussion in which Simelane claimed that the issue of the DPCI not assisting the PCLU was now solved:

“Ms Smuts asked if the NDPP could confirm if the DPCI was not indeed assisting the PCLU in post Truth and Reconciliation (TRC) Unit matters.

Adv Simelane replied that the DPCI not assisting the PCLU was an old matter as there were no problems now.”

324. *This was the last time the TRC cases appeared in the minutes of the Justice Portfolio Committee until 2017. This was remarkable given that there was zero progress on the TRC cases in this 6-year period.*

325. *Following the Supreme Court of Appeal ruling on 1 December 2011 setting aside Adv Menzi’s Simelane appointment as NDPP, Adv Nomgcobo Jiba was appointed Acting National Director of Public Prosecutions and held the position until 4 August 2013. It appeared that for certain times during this period, Dr Silas Ramaite also acted in this post.”*

YOUR RIGHTS AND OBLIGATIONS

9. You are entitled to attend the hearing at which the evidence relating to the above allegations, and any other that may be led against you, is presented. You may be represented by a legal practitioner of your choice.
10. Rule 3.4 requires that, within fourteen (14) calendar days of this notice, you submit a statement in the form of an affidavit responding to the allegations. Your affidavit must specify which parts of the evidence are disputed or denied, and set out the grounds for such dispute or denial.
11. If you wish to—
 - a. give evidence yourself;
 - b. call any witness in your defence; or
 - c. cross-examine the witness whose evidence implicates you,you must apply in writing to the Commission for leave to do so within fourteen (14) calendar days of this notice, accompanied by your affidavit.
12. You may also apply for leave to make written and/or oral submissions regarding the findings or conclusions that the Chairperson should draw from the evidence relating to you.

COMMUNICATION WITH THE COMMISSION

13. All correspondence, applications, and affidavits must be directed to: The Secretary of the Commission [Insert Secretary's email and postal address]

DATED at **SCI BONO DISCOVERY CENTRE** Johannesburg on this 19 day of September 2025.

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



DRAFT 1

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

STATEMENT

I, the undersigned

MENZI SIMELANE

do hereby state under oath as follows,

1. I am an adult male legal practitioner practicing as an advocate at Duma Nokwe Group, the Place, Sandton. I am a member of the Johannesburg Society of Advocates ("the JSA") and have been since 1997. I am a member in good standing and registered with the Legal Practice Council with membership number: 104651. The subject of this application arose when I was the Director-General in the Department of Justice and Constitutional Development between 2005 and 2009 and when I was DNDPP and NDPP from 2009 to 2012.

JN MS

2. The contents of this affidavit are within my personal knowledge unless the context indicates otherwise and are to the best of my knowledge both true and correct. Where I make legal submissions, I do so on the advice of my legal representatives, whose advice I believe is true and correct. Where I rely on material obtained from another source, I believe such material to be true and correct to the extent possible.

RELEVANT BACKGROUND FACTS

3. In my capacity as DG, I also had the responsibility to co-chair the DGs JCPS Cluster ("the DGs"). It, *inter alia*, included the following departments, Defence, Home Affairs, NIA and SASS (now State Security), DOJ&CD and Correctional Services. There were other departments in the cluster, but these formed the core in light of their areas of responsibility. The responsibility of the cluster is to supervise and oversee the implementation of the Programme of Action (POA) of government in relation to justice, crime and prevention interventions. In this respect it receives regular reports from JOINTS – the operational arm of the departments of the cluster – and assesses progress made on the programmes and then consider all risks consequent on the implementation of the cluster programmes. The DGs of the Cluster ("the cluster") report to the Ministers of the JCPS Cluster.
4. The DGs of the cluster from the security departments also constituted the DGs National Security Council ("the NSC"). Its function was to meet to discuss those matters that were considered to be impacting or could impact national security. This body rarely met. I do not recall however if it met once on these matters.

FN
MS

5. The role of the cluster, including that in 3 above, essentially involved coordinating the work of the security departments through the JOINTS and then exercise oversight over that work and the policies on security matters. The DGs kept the Minister updated on progress. They also reported on any aspect that affected cooperation between the departments and sought to resolve those matters itself or through the Inter-Governmental Relations Framework (“the IGR”).
6. Within the department itself, it goes without saying that in my capacity as DG, I was responsible for the implementation of government programmes relating to, *inter alia*, the administration of justice, transformation of the judiciary and the legal profession, putting in place policies that respond to the approved programmes, drafting of relevant legislation, eg Superior Courts Bill, Legal Practice Bill (these were subsequently passed by the NA).
7. In my capacity as the DG, I was also the Competent Authority for the Republic of South Africa. This is the designation that authorized me to be the point of contact on behalf of the RSA where another country required mutual legal assistance (MLA) from RSA. This also applied where RSA required mutual legal assistance from another country. In other words, where any department was required to assist another country or if it needed assistance from another country, all such coordination and necessary applications must be brought to the Competent Authority to attend to. In simple terms, the process was centralized. I am advised that this remains the position to this day.
8. In this capacity I once had to intervene in one instance when the department discovered that the Directorate of Special Operations (“the DSO”) had been exchanging communication with the Serious Fraud Office (“the SFO”) relating to

the investigation of the 'arms deal'. This happened when officials in the international unit of the department intercepted communication showing this exchange. The breach was so serious I had to travel with a delegation from the department to the UK, to meet my counterpart at the SFO to express government concerns in that regard. I invited Adv Mpshe SC, the acting NDPP at the time and his team to join the delegation. The matter was eventually resolved.

9. Further in the cluster, there were discussions relating to the conflict between the DSO, SAPS and the intelligence services (SS) and how this posed a security risk to the country and how it affected the work of those respective departments. The main concern was that the officials of the DSO were engaging in various ways with foreign intelligence agencies - a mandate of the Secret Service – which it was alleged were unlawfully operating inside South Africa. Due to, *inter alia*, the sensitivity and the seriousness of the risk to national security, a judicial commission of inquiry was established by the former president to look into the issues. It was headed by Hon. Justice Khampepe. Its report is available on the internet and in the department of Justice. All the support necessary for the Commission to operate optimally was the responsibility of the Minister of Justice and as such, I was responsible, as DG to ensure that appropriate human and financial resources were provided. This also included liaising with any affected department whose input was required. The department seconded a senior official to lead the Secretariat of the Commission.

10. In about 2006 or 2007, I was tasked by the Minister to establish a unit in the department that would be responsible for the implementation of the government programme regarding matters that came from the TRC processes that were

considered incomplete and those requiring attention. We colloquially referred to these as post – TRC cases.

11. The work of the TRC Unit involved essentially two activities. The first related to the reparations or financial assistance to the individuals or families identified using a criteria or assessment that would be developed. The database however would come from the TRC processes particularly the TRC reports. The other activity related to investigations that needed to be carried out in respect of those individuals who did not receive amnesty. That part of the programme was the responsibility of the NPA and the police in the light of their respective duties to prosecute and investigate respectively. I was not involved with that area of work.
12. All the meetings of the cluster were coordinated by the Secretariat jointly made up of the coordinating departments – Justice and SAPS. It was responsible for the agenda, Minutes and the reports.

IMPLEMENTATION OF THE GOVERNMENT PROGRAMME OF ACTION REGARDING TRC MATTERS

13. The President of the RSA, H.E President Ramaphosa by Proclamation on 29 May 2025 established a judicial commission of enquiry to look into allegations Regarding Efforts or Attempts to Stop or Interfere with the Investigations and Proclamations of Truth and Reconciliation Commission cases.
14. The Terms of Reference (“the TOR”) require the Commission to make findings, report and make recommendations concerning efforts to influence or pressure or collusion by members of the SAPS, the NPA to stop investigating or prosecuting TRC Cases.

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15. I received by email a Notice in terms of Rule 3.3 of the Rules of the Commission “the Notice”). The Notice at paragraph 10 states that,

Rule 3.4 requires that, within fourteen (14) calendar days of this notice, you submit a statement in the form of an affidavit responding to the allegations. Your affidavit must specify which parts of the evidence are disputed or denied and set out the ground for such dispute or denial.

16. This statement seeks to comply with the Notice and to provide information that I recall from my engagement in the cluster on the post TRC matters. In the short time between receiving the Notice, I have tried to locate two officials that worked in the TRC Unit in the department but without success. I am informed that they left the department some years ago. I therefore provide this statement purely from memory and without the benefit of documents and/or notes that are in the department that may contain some information on these matters. The official documents of the cluster, in the form of agenda, minutes and reports, should however be available in the department and in the police.
17. Due to the passage of time since my involvement in these matters, I do not recall most of the details of the meeting, communications, the names of some of the individuals and the sequence of events. I therefore provide a high-level account as best as I can recall.
18. The issue of the investigations and prosecutions of post TRC cases was on the agenda of the cluster. When it was discussed, it was to note that such matters are on the agenda of the cluster, and that it therefore had a responsibility to monitor them and receive progress reports. The departments that were responsible to provide the reports was the SAPS and the Department of Justice.

But since these matters related to prosecutions, it was the NPA that was legally responsible for reporting. I recall that Mr Willie Hofmeyer attended some of the meetings. The NDPP did not attend the cluster meetings, and the cluster took it that Mr Hofmeyer was his secondee. I recall one meeting where he indicated that the NPA was engaging with the police. A comment was made by a police representative which triggered a brief discussion about these matters. My recollection is that the other attendees at the meeting weighed in on the importance of getting the matters moving. The conclusion of that discussion was that the cluster must take up with the NDPP any issue that the police had which required attention.

19. At the cluster meeting subsequent to the one above, it was noted that there was no report from the SAPS and the NPA, that was made regarding the progress. The co-chair, Mr Selebi then indicated that the police had a concern which its officials had raised with the NPA team about the NPA team that was going to be leading on these matters. I do not recall if the names were specifically mentioned at that meeting, but it was that meeting at which it became clear to the cluster that there was 'an issue' relating to lack of coordination between the police and the NPA. It was decided that the co-chairs and other members who were available should formally engage with the NDPP on the matter. I recall that the Secretary of Defence, the Correctional Services Commissioner, the National Commissioner of Police, the Presidency and National Intelligence Service (now State Security), were available to attend the meetings that would be scheduled. There may have been others, but I do not recall at this point who they were.



20. In preparation for the meeting, it was agreed that the Police, Defence and Intelligence Services primarily, but anybody else if they did have, would indicate their concerns to the rest of the team which they did. It was that the presence of Adv Anton Ackerman SC (Ackerman) as the lead person on TRC cases in the NPA was creating unhappiness in some quarters because of his alleged links to the persons it was alleged were likely to be investigated and prosecuted. It was suggested that Ackerman was 'an apartheid prosecutor' meaning that he was a prosecutor before the democratic dispensation and prosecuted 'comrades' on behalf of the apartheid government. It was understood that the word 'comrades' referred to members of the liberation movements who were prosecuted by the government of the apartheid era.
21. I was then tasked, as co-chairperson, to go ahead and indicate to Adv Pikoli what the concern was and that the view held by the police and the intelligence services, is that it was not supported that Ackerman lead this process. Further, that because of his history there was unhappiness especially in the police and the intelligence services about the prospect of dealing with him for the reasons mentioned above. The view expressed at the meeting was that he should not be involved in TRC cases and that Adv Pikoli should remove him from these cases and consider appointing somebody else from the NPA.
22. I requested to meet with Adv Pikoli at the NPA offices and in our meeting, I informed him of the meeting of the members of the cluster. I indicated to him what was discussed and that the view widely held. I also informed him of the request for a formal meeting with the DGs and other members of the cluster to discuss the matter. He agreed to the meeting but not with the suggestion. I do not recall

everything that we spoke about, but he made it clear that he would not remove Ackerman because he was the head of the PCLU.

23. A meeting was subsequently scheduled, and it took place in the West Wing in the Presidency although this was not the regular cluster meeting including all the departments of the cluster. Present were the members mentioned paragraph 19 above and others who I do not immediately recall. I remember these ones because they were most vocal about the concerns of their departments. From their contributions in the preparatory meeting, they indicated their concerns to be informed in part by their and their members' personal experiences with the operatives of the apartheid government as commissars and commanders in exile, and also in part from a lot of comments and reports that they were receiving from their members in their department and outside of government.
24. These members also raised concerns and dismay at what they stated was a change in attitude in Njiva (I learnt at that time that this is another name by which Adv Pioli was known to them), because immediately prior to being appointed NDPP he was DG; Justice and co-chair of the cluster. In that role he, like them, shared the same views and as DG had penned a memorandum for the cluster motivating for the dissolution of the DSO. They referred to him as being 'isolated or 'surrounded' and that those who know him best should reach out to him if possible. I do not know if this did happen. What was clear to everyone in the meeting was that these personalities knew each other, and some indicated, from the time that they grew up together in the same area in Gqeberha.

25. At the meeting those gathered requested me to chair because Mr Selebi indicated that he intended to make inputs and therefore would not be in a position to co-chair the meeting.
26. I do not recall how many meetings in all the cluster members had with Adv Pikoli and his team, so I propose to discuss the issues generally and not link them to any specific meeting or sequence.
27. In the meeting, which had only one agenda item, the approach was informal. The meeting though had order. In my observation, there was clearly tension. One could see from the body language of everyone. The colleagues were however polite and respectful towards each other. This surprised the meeting because in the engagements on the other issues of the cluster, we had grown to know that these were close comrades from exile who had known each other for a long time. We expected them to be far more friendly towards each other than they were. The meeting also sensed that the issues were, in any event, weighty and that could have contributed.
28. Adv Pikoli was accompanied by Adv Ackerman SC. I recall at some point Mr Mthunzi Mhaga, Adv Shaun Abrahams and Adv McAdams in the meeting or possibly a later one. These were the prosecutors in the PCLU. It is possible that the others may have been in a subsequent meeting.
29. The meeting then informed Adv Pikoli of the discussions of the members of the cluster and that they had tasked me to go meet with him as described above. They then confirmed the message that I had communicated to Adv Pikoli in our meeting. I do not recall the exact sequence that the inputs were made but most of them spoke to the issue, in particular then SecDef, NasComm and DG NIA.

30. The response of Adv Pikoli was exactly as he had stated to me in our meeting. He indicated that since Ackerman was the head of the PCLU, it was his job to oversee all the work of the unit including the TRC cases and for that reason, he would not remove him.
31. The mood in the meeting changed and there was tension. The members wanted to know why in the light of the concerns raised Adv Pikoli insisted on retaining Ackerman in that role. The members did not have a problem with Ackerman heading the PCLU, but just his involvement in the cases. They argued that since there are other prosecutors in the PCLU, any one of them could be assigned the responsibility for the. cases. Adv Pikoli insisted on his position.
32. At some point in the discussion, Adv Pikoli asked Ackerman to make inputs and inform the cluster members what the PCLU was actually doing in going about its work.
33. Ackerman stated that the PCLU had done some investigations and was in fact advanced on a number of cases. He indicated that it was ready to commence with at least one or two prosecutions, but that more work was needed on the others. He stated further that the PCLU had taken statements from various individuals, interviewed them and was analyzing them as part of its investigations. It was made clear that despite the concerns of the members of the cluster, the PCLU was going to continue with its work.
34. Ackerman then indicated that, in any event, as part of its work, some people – he didn't name them – had approached the PCLU to file complaints about their treatment or the treatment of people that they knew by the ANC in exile. He stated that the PCLU had taken their statements and had investigated their claims and

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reached a decision that those claims were prosecutable as well. He then indicated that they were also ready to prosecute some of those cases.

35. I recall that the meeting briefly descended into some disorder because the members all started talking at the same time and were visibly upset and somewhat shocked. What they asked was for the NPA to explain what it was doing and was actually involved in because no one in the cluster was aware of those investigations.
36. The argument being made, as I can recall, was that what Ackerman was referring to was not part of the known POA approved by Cabinet on post- TRC matters, and that if the PCLU was conducting those investigations why is that issue being included in the one that was an approved programme of the cluster. Ackerman insisted that they saw these cases as linked and they were going to deal with them accordingly. When the members looked at Adv Pikoli for comment, he said nothing on this aspect. What I recall is that he did not contradict what Ackerman said or clarify it.
37. The argument back and forth continued and then Ackerman sought to provide additional clarity by stating that the PCLU cannot ignore the complaints that it had received and that in prosecuting all the cases, they will proceed with the one involving a former apartheid government individual (he didn't name the person concerned) and when done, then start with the one 'on the other side'. When asked to clarify, he indicated that the NPA had a list of the members of the 'political military council' (I do not recall the exact name) – the highest decision-making structure of the ANC in Lusaka, Zambia, whose members were subject of the PCLU investigations because – in that capacity - they were accountable

for the decisions that were taken by the commanders on the ground about which the complainants had complained. In that regard, the NPA viewed them as prosecutable. A list was produced and alleged to be of the members of the 'political military council' and it was passed around for everyone to see. I do not recall if it was given back to him or what happened to it afterwards. It contained members of Cabinet at the time.

38. I do not know about the authenticity or otherwise of that list and what Ackerman stated was alleged about those on it. The meeting also did not enquire into those allegations.
39. Ackerman then re-iterated that the NPA approach is that they would be proceeding to prosecute 'this side and then this side' until everyone on the list was prosecuted. Adv Pikoli also reiterated the general mandate of the PCLU, which the members understood it to be an explanation in justification of what Ackerman had just indicated. Adv Pikoli then indicated that if the members insisted on the removal of Ackerman from the TRC cases, then he will remove him but that he will seek his counsel anytime if he needed it. The members stated that they were in agreement with his decision to remove Ackerman from the TRC cases.
40. It became no longer conducive to continue with the meeting because the focus had become this list. Further, that since agreement had been reached and the purpose of the engagements had been achieved, the NPA and the police, as responsible parties for these matters, would then continue with their mandates and take the processes forward and report accordingly in the normal course to the cluster. The meeting ended on that basis.

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BRIEFING THE CLUSTER MINISTERS

41. In the light of the developments, the members held a short meeting and concluded that the issues were serious enough to consider the developments as potentially a national security matter. This was in the context that activities were under way in terms of which investigations were being conducted on a programme that was not considered as part of the approved PoA and approved by Cabinet. Further, that these activities being linked to the post- TRC matters is not appropriate since these were not the same and that they were not previously discussed as part of the post-TRC matters. Their inclusion therefore in the post-TRC matters would be inappropriate unless specifically approved. In addition to that, the President and some members of Cabinet were under investigation, possibly without their knowledge, and that the investigations that Ackerman referred to may result in prosecutions then, at a minimum, the members of the cluster needed to report these developments.
42. The first reporting was to the Ministers of the Cluster. At the briefing, the DGs gave an account of their meeting with the NPA and the inputs by Ackerman. The Ministers enquired about these investigations by the NPA and whether the decisions taken on the post-TRC matters included them. The DGs advised that their understanding of the decisions taken on the post-TRC matters, was that these new matters were not included and that they would require a separate discussion and decision by Cabinet. They reported that the area of concern regarding the involvement of Ackerman in the TRC cases was discussed and

resolved with the NPA, and that the police and the NPA would then continue with their engagements.

43. The other issue that the Ministers enquired about, was whether there was a framework in terms of which all post-TRC prosecutions being dealt with. It was indicated by the DGs that as far as it was known, there was no separate framework and that the Prosecution Policy of the NPA was the one that was being utilised. Because of the nature of the post -TRC matters, the Ministers suggested that the Minister of Justice engage with the NDPP about having a framework that focuses solely on the post -TRC matters because they were unique, sensitive and important.
44. The Ministers were advised that the nature of the possible security risks inherent in the matter necessitated that they consider reporting to the National Security Council (“the NSC”). They indicated that they would consider that. This was the last involvement of the DGs on this matter as far as I can recall.
45. The normal work of the JCPS cluster continued and the post TRC matters were reported as on-going between the NPA and police and that reports would be provided as the need arose depending on milestones reached by them in their work. That was my last involvement in the cluster on these matters.

BRIEFING TO PARLIAMENT

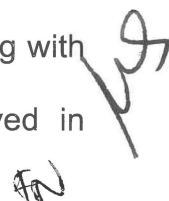
46. In the normal course as DG of the department, I assisted the Minister to report to Parliament on the work of the department. In respect of the work relating to post-TRC matters, I reported that the work was on-going in the respective areas where it was being carried out and that the issue of concern – cooperation with

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each other - that existed between the NPA and the Police had since been addressed.

GENERAL

47. In paragraph 315 the allegor makes reference to me having '*pressed Adv Pikoli to remove Adv Ackerman...*'. I have already in this affidavit the engagements with Adv Pikoli regarding Ackerman and the post-TRC cases. I therefore deny what is stated by the allegor. I also note that the allegor is engaging in speculation regarding a possible alleged engagement with Adv Mpshe SC, although he/she does not say that I actually did so. As far as I can recall, I never engaged with Adv Mpshe SC regarding the removal of Ackerman from post-TRC cases. There would have been no need because, as far as the cluster was aware, the issues were resolved with Adv Pikoli.
48. During my tenure in the NPA, McAdam and I never met or spoke. A reason never came for a meeting or discussion even in the presence of others. Amongst the changes that I effected, the PCLU fell under a Deputy National Director of Public Prosecutions ("the DNDPP"). That is the functionary who would have dealt with McAdam directly and given him instructions. Where my support was required on the recommendation of the DNDPP, I would have given it. I imagine that before seeking my support, the DNDPP would have first discussed with McAdam the issues and both would have agreed that they should seek my support. So, any instruction to him would not have come from me. I never disagreed or stopped any anything that was requested of me relating to prosecutions. I strictly followed the framework in section 179(5) of the Constitution. Unless I was dealing with representations or a racketeering charges matter, I never got involved in



prosecution decisions. I do not recall such an instruction. In addition, the DPP in the Northern Cape primarily attended to all prosecutions in that jurisdiction. If some assistance from McAdam was needed it would never have required him so much of his time to not attend to his cases. If indeed he was asked to assist in an investigation, it means it was important and specifically required him. Since I don't recall what these investigations were, I cannot comment further on this aspect. McAdam would however have remained supervised by his superior who was responsible for the work of the PCLU. What I know is that the DNDPP concerned would, as the responsible supervisor, have engaged with me if there were concerns. This did not happen. Further as regards the civil matter, the case concerned was within the mandate of the PCLU and specifically an area in which McAdam is a specialist, most experienced and had knowledge of. Besides, the contribution required from him was to assist the counsel that were briefed to represent the NPA in court by providing information so that they could prepare court papers. McAdam did not personally run the matter in court.

49. At paragraphs 322 and 323, I confirm the reporting to Parliament. I describe the responsibility of the DG in this regard. The report mentioned simply sought to inform the members of Portfolio Committee that the issue previously raised with them – as this one was – of lack of coordination between the police, intelligence services and the NPA had been resolved. This meant that the Portfolio Committee would – like the cluster - in future expect to receive specific reports on progress in those investigations and prosecutions.
50. Reference has been made to me possibly talking to former acting NDPP, Adv Mpshe SC and 'stopping' or suggesting that the NPA stops prosecutions.

Although the author/allegor does not state that I, in fact did do this, to the extent that it is suggested, I deny it and put him/her to the proof.

51. The essence of the allegations being made is that in my capacity as DG and/or co-chairperson of the cluster, I stopped the prosecutions or contributed to such alleged stopping or attempts to that effect. I propose to deal below very briefly with this aspect and demonstrate how poorly conceived the suggestion is.
52. First, at paragraph 262 it is stated that Adv Pikoli was summoned to a meeting Cabinet Committee on Post TRC Cases and that the DGs were present in that meeting. In this respect, I do not recall a Sub-Committee of Cabinet as described. I do recall a Sub-Committee of the JCPS Cluster. It is possible that since the meeting concerned related to specific issues only the Minister whose departments dealt with security issues attended this meeting.
53. Second, it is known that the NPA through the PCLU conducted investigations on its own, met and took statements from those it identified they needed statements from. This was also confirmed by Ackerman in a meeting with members of the cluster in the presence of Adv Pikoli and other members of the PCLU. Quiet clearly, the NPA did have investigation capacity. In fact, this is confirmed by the fact that there was a media report about the NPA having met with Rev Chikane to discuss an investigation of a matter relating to him. The issue of concern between the NPA and Police related to them not coordinating their responsibilities as was expected. This is because this required that any additional support that the NPA needed from the Police – which had more capacity, the police were expected to assist as part of their duty. It was not because the NPA could not function on its own.

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54. Third, it is known that a decision to prosecute is independently taken by the prosecutor concerned in a matter. So, to stop a prosecution would require that the prosecutor concerned be stopped by me. I am not aware of any prosecutor that has alleged that I stopped them from prosecuting. If it is Adv Pikoli, he is not that prosecutor because – as far as I know - he was never entrusted with the prosecution of any person himself as a prosecutor. Further, I never spoke to him in that capacity at any time. It is also not any one of the PCLU prosecutors – Adv Abrahams, Adv Mhaga and Adv McAdam.
55. Third, in terms of the NPA, the authority to take a decision to prosecute vests in the DPP with jurisdiction and no one else. In Pretoria, this would have been Adv Sibongile Mzinyathi. I am not aware that he has complained or implicated me along the lines contained in the Notice. Put differently, he has not alleged that I stopped or attempted to stop a prosecution within his jurisdiction of the type alleged by the allegor.
56. Fourth, in terms of section 179 (5) of the Constitution, the powers of the NDPP are spelt out. It follows that the NDPP cannot execute any power except that specifically provided for in that section. It cannot therefore be alleged that I stopped or attempted to stop the NDPP from prosecuting any case.
57. Fifth, if indeed any prosecutor was stopped by me, I imagine that this would have been reported to the Minister. I am not aware of any person reporting this kind of matter to the Minister. I say so because I imagine that I would have been asked to explain and that I would have been informed what case it was that I stopped from prosecuting or attempted to stop from being prosecuted as the case may be.

FN MS

58. Sixth, a suggestion is being made that a request to remove Ackerman from playing an active role in the investigation and prosecution of post-TRC cases is tantamount to stopping prosecutions. It is not explained how this can be. Adv Pikoli agreed with the request when he did not have to if he was of the view that it stopped prosecutions. One can only conclude that he agreed because it did not affect the prosecutions. It is difficult to imagine that he would agree with a view and then take a decision, that negatively affected the work of the PCLU. The inescapable conclusion is that, whilst not his preferred position, the decision did not affect the PCLU.
59. Fifth, Ackerman indicated that the NPA/PCLU was conducting investigations from which it was going to carry out prosecutions. This value chain is solely controlled by it under the DPP and NDPP. If therefore as Ackerman indicated, the NPA was ready to prosecute '*this side and then this side*', that demonstrates a completion by it alone, of an investigation process that resulted in prosecution ready cases. What then stopped it from prosecuting because the decision to prosecute is solely that of the prosecutor concerned, either under the DPP, Ackerman, McAdam or any other? The engagement by the cluster with the NPA – of which the NPA is also part – could never have been logically considered by any person to be the cluster stopping or attempting to stop any prosecution. I say this also because the cluster has no authority or power over the decision makers in the NPA. Even I, as the DG, had no authority over any person in the NPA in respect of investigations and prosecutions. In that scenario it is not possible to stop any person from doing anything let alone conduct an investigation or take a decision to prosecute.

FN
MS

60. To the extent that I may not have attended to each specific allegation, it must be taken as denied. I am acutely aware that the allegor is relying on hearsay and does not have first-hand information. I reserve the right to supplement this affidavit should I recall or become aware of information that can be added to this affidavit.

...in my own-
...in my presence.

at SANDTON on 2025-10-27 at 3005185 CB KHAMBOUE FN

(HANDTEKENSIG) KOMMISSARIS VAN EDE
(SIGNATURE) COMMISSIONER OF OATHS

PEUCIA NOZUKHAYAD KHAMBOUE

FULL FIRST NAME AND SURNAME IN BLOCK LETTERS

Summit Road MORNINGSIDE

BEESIGHEFONDERS (STRAATADRES)
BUSINESS ADDRESS (STREET ADDRESS)

SANDTON

CONSTABLE

DEPONENT



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

BEFORE: JUSTICE KHAMPEPE, KGOMO AND GABRIEL SC

DATE : 29 MARCH 2026

SUPPLEMENTARY AFFIDVIT OF ADVOCATE MENZI SIMELANE



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I, the undersigned

MENZI SIMELANE

do hereby state under oath as follows,

A. INTRODUCTION

1. I am an adult male legal practitioner practising as an advocate at the Duma Nokwe Group of Advocates, Sandton.
2. I have been a member of the Johannesburg Society of Advocates since 1997 and am duly registered with the Legal Practice Council under membership number **104651**.
3. The facts contained in this affidavit are within my personal knowledge unless otherwise indicated and are, to the best of my knowledge and belief, both true and correct.
4. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I believe to be correct.
5. The purpose of this supplementary affidavit is to respond to allegations made against me in:
 - 5.1. the Calata application, and
 - 5.2. the evidence presented before this Commission by Advocate Anton Ackerman SC, Advocate Vusi Pikoli, and Advocate Chris Macadam.
6. My intention is to provide clarity regarding my role as:



- 6.1. Director-General of the Department of Justice and Constitutional Development (2005–2009), and
 - 6.2. **later National Director of Public Prosecutions (2009–2012),**
- in relation to the investigation and prosecution of post-TRC criminal cases.
7. I categorically deny that I obstructed, interfered with, or sought to frustrate the investigation or prosecution of TRC-related cases.

B. APPROACH TO THIS AFFIDAVIT

8. This affidavit is structured as follows:
 - 8.1. First, I address the specific allegations raised in the Calata affidavit.
 - 8.2. Second, I respond to allegations made during the oral evidence of witnesses before this Commission.
 - 8.3. Third, I provide context regarding the institutional structures of government, particularly the JCPS Cluster, which are central to understanding my role.
 - 8.4. Finally, I explain my actual role and responsibilities as Director-General and later as NDPP.
9. Should I inadvertently fail to address any allegation, this is neither deliberate nor evasive. In the light of the passage of time since my involvement in these matters and not having access to some of the documents, I do not recall some of the detail.

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C. GENERAL POSITION

10. I wish to state from the outset that I support the call that there be accountability for apartheid-era crimes to the extent that any wrong doing can be established on the part of any person or persons. I accept that the families have an expectation that justice should be pursued.
11. I say so because firstly, as a citizen of this country, the outstanding issue of the TRC affects all of us, albeit in different ways. The apartheid system was imposed on all of us as Black people equally. Secondly, the pursuance of justice through the TRC processes is an issue my own family remains involved with. I am thus directly and personally affected. There are many others who are affected and seek justice, but simply lack the means and the resources to pursue their claims.
12. The prosecution of crimes arising after the Truth and Reconciliation Commission process represents an important part of South Africa's constitutional commitment to justice, reconciliation and the rule of law.
13. The suggestion that I deliberately sought to undermine such prosecutions is therefore both incorrect and inconsistent with my professional conduct and public responsibilities and as demonstrated so far by the evidence before the Commission. It is also inconsistent with my own sense of justice and personal views and that as a direct victim of apartheid, I would seek to shield perpetrators of my own family's suffering. I am deeply offended by such a suggestion.

A handwritten signature in black ink, appearing to be 'MS' with a flourish below it.

D. RESPONSE TO SPECIFIC ALLEGATIONS IN THE CALATA AFFIDAVIT**Allegation: I pressed Adv Pikoli to remove Adv Ackerman from TRC cases**

13. In paragraph 316 of the Calata affidavit, it is alleged that I “pressed Pikoli to remove Ackerman from the TRC cases”.
14. This allegation is incorrect.
15. I never instructed, pressured, or directed Adv Pikoli to remove Adv Ackermann from any case.
16. As outlined in my October 2025 affidavit, what did occur was the following:
 - 16.1. Concerns had been raised within the Justice, Crime Prevention and Security Cluster (“the JCPS Cluster”) regarding the cause(s) of the lack of cooperation between the SAPS and the NPA in relation to the TRC matters.
 - 16.2. As the co-chairperson of the JCPS Cluster of Directors General, I was mandated by members of the Cluster to lead the DGs of the security departments of the Cluster in a meeting with Adv Pikoli to find out the cause of the lack of cooperation and to discuss their concerns.
17. I therefore made contact with the office of eh NDPP to arrange a meeting to brief him what the meeting will be about. My engagement with Adv Pikoli was therefore procedural and facilitative, not directive.
18. When we met, I informed him that members of the Cluster mandate to me and the affected DGs. I then informed him that concerns were raised about the perception and role of Adv Ackerman SC and further that there was a call for his removal from leading TRC investigations and prosecutions.



19. Adv Pikoli made it clear to me that he would attend such a meeting but that he does not accept the call by the DGs concerned.
20. At no stage did I pressure or instruct Adv Pikoli him to remove Adv Ackerman SC. In my role, I simply facilitated a meeting of the DGs with the NDPP to discuss as indicated above.
21. In his oral evidence and in his affidavit, it is worth noting that Adv Pikoli did not say that I specifically instructed him to remove Adv Ackerman SC. I would not have done so anyway because I personally had no basis to make such a suggestion. All that I could do was communicate the views as expressed by those that gave them.

Allegation: I instructed Acting NDPP Mpshe SC to remove Adv Ackerman SC

22. The Calata affidavit speculates that I instructed Adv Mokotedi Mpshe SC, then Acting NDPP, to remove Adv Ackerman SC from the TRC matters.
23. This allegation is **pure speculation** and is not supported by any evidence from Mr Calata himself or any of the witnesses that have so far testified.
24. I never issued any such instruction.
25. Indeed, the allegation was subsequently withdrawn or not persisted with during the proceedings by Adv Ackerman SC.

Allegation: My appointment as NDPP “doomed the TRC cases”

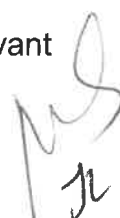
26. The Calata affidavit alleges and suggests that my appointment as National Director of Public Prosecutions resulted in the further neglect of TRC prosecutions.

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27. This allegation is not supported by evidence, either from Mr Calata himself or any witnesses that have testified so far before this Commission.
28. During my tenure as NDPP:
- 28.1. I never instructed any prosecutor to halt or delay TRC prosecutions.
- 28.2. I issued no directive interfering with prosecutorial decision-making in these matters.
- 28.3. Decisions whether to prosecute were taken by the relevant Directors of Public Prosecutions, based on the evidence and applicable law.
- 28.4. I did not interfere with any of those decisions, if any were taken.
29. In fact Ackermann made it clear that he never interacted with me on any TRC matters. Adv Pikoli does not elevate my interaction with him to arrange a meeting with the DGs of the JCPS to have been an act of interference with prosecutorial independence.

Allegation concerning Advocate Macadam

31. It has been alleged that I assigned Advocate Macadam other work in order to prevent him from continuing with TRC cases.
32. This allegation is incorrect.
33. The objective evidence demonstrates that:
- 33.1. Adv Macadam continued to work on TRC matters, and
- 33.2. he produced memoranda concerning such cases during the relevant period.

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34. Furthermore, Adv Macadam has not testified that I instructed him to abandon or deprioritise TRC investigations. On the contrary, he testified to what is stated above in paragraph 33.
35. I must mention that also that there was a view about Adv McAdam and his past but it was not as strong as that held towards Adv Ackerman SC. I never got to understand why and this never explained.

E. RESPONSE TO EVIDENCE BY ADV PIKOLI

35. Adv Pikoli testified regarding alleged political interference in TRC prosecutions.
36. Importantly, he did not identify me as having personally interfered in any prosecution.
37. In the documents before this Commission, there is no memorandum, letter or email from Adv Pikoli accusing me of interfering with the NPA's work.
38. While Adv Pikoli expressed broader concerns regarding the JCPS Cluster, these concerns do not establish that I personally engaged in unlawful interference.

F. RESPONSE TO EVIDENCE BY ADV ACKERMANN

39. Adv Ackermann testified that Adv Pikoli informed him that I had raised concerns about his role in TRC prosecutions.
40. My engagement with Adv Pikoli must be understood in context.
41. Discussions within the JCPS Cluster related to the monitoring of the progress of the work on the TRC matters, and therefore had to consider:

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- 41.1. the support by the SAPS and the intelligence services to the NPA including SAPS availing investigators,
 - 41.2. cooperation between SAPS, NIA, SS and DI (state agencies); and
 - 41.3. the need to ensure confidence in the prosecutorial process.
42. These discussions were strategic and institutional. They were not attempts to dictate prosecutorial outcomes.
43. Any suggestion that raising concerns within a government coordination structure in the pursuance of the work of government as mandated constitutes interference with prosecutorial independence is misplaced.
44. Adv Ackerman SC also made reference to my meeting with him – alone – regarding a matter involving two intelligence officers from Rwanda. As indicated on my behalf in his cross examination, I do not recall any meeting with Adv Ackerman SC where I and him alone ever met to discuss anything let alone the matter that he mentioned. Firstly, despite not having anything personal against him, I would not meet with him alone in circumstances where discussions about him and his alleged past had been spoken about especially by those who knew, and were experts on, intelligence matters. Secondly, I cannot imagine any reason why him and I would discuss and as he suggested an operation involving intelligence matters. This is because neither the NPA nor the Department of Justice and Constitutional Development has a mandate for intelligence. I cannot fathom what he imagines we would be discussing. If indeed we did discuss, it would have related to a case and such a discussion would have taken place in the presence of others involved in that case, including his supervisor, and for purposes of advancing that prosecution. What I do recall relating to Rwanda is

a prosecution that related to an attempted assassination of a Rwandan General who was residing in South Africa. That prosecution was handled by another prosecutor and not Adv Ackerman SC.

45. Adv Ackerman mentions that with respect to his appointment as head of eh PCLU, he must have been 'vetted' and by this I suspect that the suggestion is that if his past was an issue, he is unlikely to have been appointed and it is suggested thus that those 'opposed' to him may have been undermining his status as a vetted individual. I take no issue with his thoughts on this aspect. I simply state that a vetting at this that time of our country would not have prevented him from being appointed. It must be recalled that government and those in political leadership across all political parties had implored on the South Africans to accept- despite the pain of the past – and embrace reconciliation and to work towards nation building. That is why there was a government of national unity. Further, it is well known that the amalgamation of various homeland governments with 'Pretoria' to create a single government carried enormous national security risks because it was known that people who were on opposite sides now had to work together in the same environment and that this had to happen whilst the 'wounds were fresh' as it were.. Thus national reconciliation and nation building however did not mean that issues of national security did not require to be monitored, assessed for risk and that vigilance be exercised, especially by the JSCP Cluster in respect of those – internally and externally - who may have wanted to undermine those government efforts. Therefore views held that related to that area of work needed to be considered, reflected on and reported in the normal course otherwise the officials would have failed in their respective responsibilities.



G. GOVERNMENT STRUCTURES: THE JCPS CLUSTER

44. Much of the misunderstanding regarding my role appears to me to be arising from a lack of actual knowledge of how government functions and a lack of appreciation of the institutional structures of government coordination. In his oral evidence, Adv Pikoli articulated in some detail how government is configured and functions within the Cluster system. I agree with that articulation. For emphasis and clarity, I reiterate this further below.
45. Government departments are organised into clusters, including the Justice, Crime Prevention and Security Cluster.
46. The purpose of the Cluster system is to **coordinate** policy implementation across departments and monitoring of programmes.
47. Importantly, Clusters do not exercise decision-making authority over prosecutorial matters. They provide strategic direction, coordination and advice on the government agenda and the priorities as determined by the Cabinet.
48. The final authority regarding prosecution decisions remains exclusively with the NPA.
49. Reference was also made in these proceedings of a letter by the National Commissioner of Police to me regarding his proposal that the Cluster makes recommendations to the NPA/NDPP before any prosecution decision is taken. My response to that proposal was presented here to suggest that I supported what the NDPP/Adv Pikoli interpreted to be the Cluster interfering with prosecutorial independence. In the context of the functioning of the cluster system as described above, I propose to explain this aspect below.



50. First, following the meeting the DGs and the NDPP at which the latter agreed to remove Adv Ackerman SC from leading TRC prosecutions and thus the cause of the lack of cooperation being resolved, the matter reverted to the SAPS as the lead department on criminal investigations. The reason is that the disputed issue being resolved, it was then required of the SAPS to submit a proposal of how it proposed to provide the support to the NPA. This it would do in its routine engagements with the NPA and through the Interdepartmental Task Team that had been established as mentioned in these proceedings. That cooperation would also be reported to the Cluster as a whole in the ordinary course.
51. Second, the National Commissioner's letter to me, which I understood to also have been sent to the DGs of NIA, SS, Home Affairs and Secretary of Defence, was to seek my support for the approach that he would advance and motivate to the DGs of the cluster in terms of which, *inter alia*, the SAPS could best provide the required support. Part of the elements of the support that had been mentioned in discussions was a detailed security assessment that would include those to be investigated, the climate in the country about the prospects of such prosecutions from both those implicated and those who were victims of their actions, amongst others. I supported the approach largely because from the bit that was indicated, it made sense that any support include a security assessment. My support was also on the understanding that a detailed proposal would still be provided to the cluster for comments. This was standard practice in the cluster – as with all the clusters – that any matter that any department proposed to it, it must demonstrate that it had been discussed with the other departments whose contributions to it was expected and their views obtained. In other words, any proposal to the cluster was expected to be 'processed' outside

of the formal cluster meeting first before submission for consideration. I do not know how the other DGs responded to their letters, if they did receive them, but I recall that they shared the same views regarding the need for a security assessment.

52. Third, in a discussion of any proposal for which the support of the cluster would have been required, the cluster would have been interested in whether any support was meaningful for purposes for which it was required. This would entail an interrogation of the following detail amongst others, the number of officers seconded or made available to carry out investigations, their levels/rank, experience particularly in the detection of crimes the costs of the, if any, the resources required for the investigations and the impact, if any, on the other work of the police.
53. Fourth, a discussion by the cluster would not seek to support what has been submitted, even if supported by a few DGs, if it had shortcomings, but would seek to ensure that the mandate of the cluster in overseeing the agenda item of the TRC matters was being carried out effectively as a reflection of expected cooperative function of the respective departments and for the effectiveness of the cluster. Anything that would not have been satisfactory to the DGs of the cluster would in all probability have been rejected and a demand for further work to be done on it. That outcome would have found its way to the cluster of the Ministers and they would have followed up on it and required an explanation.
54. Fifth, even if accepted and proceeded with by SAPS and the NPA, any proposal would have been still submitted to the Ministers for them to note so that if there are any aspects to which they wanted contribute their contributions would also

be taken into account. In essence, any proposal would be a working approach that could be improved as the work was being carried out.

55. My view is that the suggestion for investigation and prosecution measures remained in its formative stages and required a multi-agency or departmental approach.
56. Sixth, my understanding is that is that, in the event that no proposal could be agreed by the cluster, ie. a stalemate, the cluster would report to the Ministers for their intervention. This would entail a meeting with the DGs at which the latter would account for why there is no resolution to the issue. Naturally, this would require the lead department (SAPS) explaining the concerns. The other departments – SS,NIA, DI and DHA would also provide their explanations for their parts. Serious concerns that would not be possible to resolve by the Ministers alone, would have required that a formal memorandum be prepared for submission to the Cabinet. The co-chairing department would submit a joint Memorandum since both would be affected in respect of the areas on which they were lead departments ie. SAPS for investigations and Justice for prosecutions. As indicated elsewhere in this affidavit and in the oral evidence of Adv Pikoli regarding how the cluster system of functions, the joint Cabinet memorandum would have been discussed in the JCPS Cabinet Sub-Committee first and then to the Cabinet.
57. What I have described above in paragraphs 50 to 54 did not happen because the SAPS, at least as I recall, did not submit a proposal to the DGs cluster and obviously, the matter did not get onto the agenda. What I recall is what I stated in my October 2025 affidavit regarding how the meeting between the DGs and the NDPP ended and the subsequent briefing to the Ministers. I am also mindful

that there were other developments in the country at the time which detained the main affected departments (Justice, SAPS, NIA, DI and SS) eg, the Khampepe Commission of Inquiry, the Ginwala Enquiry and the legislative process for the dissolution of the DSO. If there was a discussion in the cluster, I do not recall it or I must have missed those meetings.

58. I mention these issues because in the normal scheme of government and the cluster system, any aspect of work that is affected such that the work of government cannot be performed effectively, is reported at appropriate levels for attention and resolution.
59. I therefore do not recall any part in the work done by the JCPS DGs Cluster or the 'Forum' of DGs, where I was involved where there was discussed, an instruction or suggestion of the type that would or could be interpreted as obstructing or intending to obstruct the investigations and prosecutions of TRC cases.
60. What in my respective view may be overlooked in the debates on these matters and by the critics of the DGs cluster, is that the JCPS Cluster had a duty to support the work of the NPA and that its work was directed at achieving precisely that. Such is the coordination and cooperative nature of departments in the cluster framework. This approach is also located in the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). It is inconceivable to me that the work done by the cluster can be projected as having an intent to interfere as suggested.



H. MY ROLE AS DIRECTOR-GENERAL

49. I assumed the position of Director-General of Justice in 2005.
50. By that time, the policy framework regulating TRC prosecutions had already been developed by my predecessor together with the Forum of DGs.
51. My role was therefore primarily administrative and coordinative, including:
- 51.1. supporting and ensuring the implementation of government policy relating to the administration of justice,
 - 51.2. facilitating inter-departmental cooperation, and
 - 51.3. ensuring that the NPA had access to necessary institutional support in respect of all areas of its work.
52. I had no legal authority to direct prosecutions.

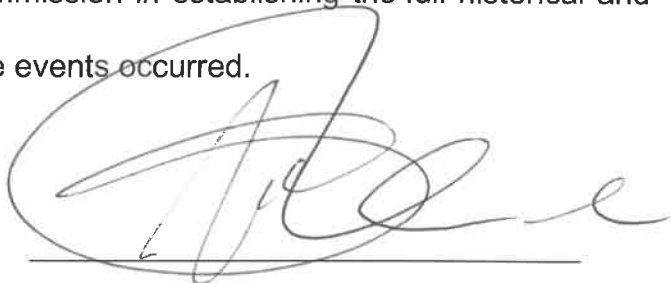
I. CONCLUSION

53. I categorically deny that I engaged in any conduct intended to obstruct or undermine the investigation or prosecution of TRC-related crimes. No evidence has been provided in these proceedings to support those claims.
54. My actions as Director-General and later as NDPP were directed toward facilitating cooperation between institutions of the state in order to support the work of the National Prosecuting Authority.
55. The difficulties experienced in prosecuting TRC matters arose primarily from structural challenges occasioned by the concerns of the SAPS, NIA SS and DI regarding the role of Adv Ackerman SC.

56. I therefore reject the suggestion that I was responsible for frustrating the prosecution of TRC cases. As I have explained above, during my tenure as Director-General of the Department of Justice and Constitutional Development and later as National Director of Public Prosecutions, I did not issue any instruction preventing the investigation or prosecution of TRC matters, nor did I take any steps to delay or frustrate such prosecutions.
57. Decisions regarding whether and when to prosecute cases remained the responsibility of the relevant prosecutors and Directors of Public Prosecutions within the National Prosecuting Authority, in accordance with the constitutional and statutory framework governing prosecutorial independence.
58. The evidence relied upon by those who have sought to implicate me consists largely of speculation, misunderstandings of institutional processes, or interpretations that are not supported by the objective record. In the case of Adv Ackerman SC, it is informed by his personal views and opinions of me.
59. Where allegations were raised by Advocate Ackerman SC, those allegations were either clarified and as I understood, withdrawn by him. During cross-examination some were shown to have been based on assumptions rather than direct knowledge.
60. I reiterate that I have always supported the proper functioning of the criminal justice system and the constitutional mandate of the National Prosecuting Authority to do its work. I also supported the proper functioning of all the departments in the JCPS Cluster to the extent that its work was affected.

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- 61. I acknowledge the importance of the call for accountability for crimes committed during the apartheid era and the expectations of the victims and their families that justice should be pursued.
- 62. It is however incorrect and unjustified to attribute the delays or challenges associated with certain TRC prosecutions to actions taken by me especially in circumstances where there is no evidence provided to support such claims.
- 63. I therefore respectfully submit that the allegations suggesting that I obstructed or undermined TRC-related prosecutions are unsupported by the evidence and should be rejected.
- 64. I remain willing to assist this Commission in establishing the full historical and institutional context in which these events occurred.



MENZI SIMELANE

I hereby certify that on the 28th day of **MARCH 2026** in my presence the Deponent signed this affidavit, swore and acknowledged that he knew and understood the contents thereof, had no objection to taking the prescribed oath, considered the oath to be binding on his conscience and thereafter took the prescribed oath before me.

SOUTH AFRICAN POLICE SERVICE
 CLIENT SERVICE CENTRE
 SANDTON
 2026-03-28
 KLIENTE DIENSTSENTRUM
 SANDTON

COMMISSIONER OF OATHS

Full names: JACKSON LEDWABA
 Address: 02 SUMMIT RD
 Capacity: SERGEANT

on 2026/03/28 on 18 at 35
 (HANDTEKENING) KOMMISSARIS VAN EDE
 (SIGNATURE) COMMISSIONER OF OATHS
Jackson LEDWABA
 VOLLE VOORNAAM EN VAN IN DRUKSKRIF
 FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS
02 Summit Road
 BESIGHEIDSADRES (STRAATADRES)
 BUSINESS ADDRESS (STREET ADDRESS)
Morningside Sandton
Sgt
 RANG/RANK SA POLISIEDIENS SA POLICE SERVICE

WEBBER WENTZELin alliance with > **Linklaters**

The Chairperson: Justice Khampepe
Commission of Inquiry, Stopped TRC Investigations and/or
Prosecutions

By email

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Your reference

Our reference

Date

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06 March 2026

Dear Justice Khampepe

APPLICATION TO CROSS-EXAMINE ADV MENZI SIMELANE

1. We act on behalf of Calata and 24 other families.
2. We refer to the timetable of the Commission indicating that Adv Menzi Simelane will testify on 10 March 2026. We hereby apply in terms of Regulation 8(3) of the Commission's Regulations read with Rule 3.7 of the Commission's Rules to cross examine Adv Menzi Simelane ("**Mr Simelane**") when he testifies before the Commission on 10 March 2026.
3. We attach hereto our statement, setting out those averments that we dispute in Mr Simelane's statement.
4. It is in the best interests of the work of the Commission that our clients be allowed to cross-examine and test the veracity of the facts put up by Mr Simelane.

Yours faithfully



WEBBER WENTZEL

Asmita Thakor

Partner

Direct tel: +27 11 530 5875

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Senior Partner: G Driver **Managing Partner:** S Patel **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp TB Ball DC Bayman AP Blair K Blom N Blom AJR Booysen AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya L de Bruyn PU Dela M Denenga C Dennehy DW de Villiers HM de Villiers ST Dias BEC Dickinson DA Dingley W Drupe E Durman GP Duncan CP du Toit TC Dye L Dyer SK Edmundson LF Egypt KH Eiser JC Els S Farren K Fazal G Fitzmaurice JB Forman L França M Garden MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green O Gusha JM Harvey JS Henning KR Hillis CM Holfeld PM Holloway SJ Hutton KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn L Kamukwamba M Kennedy A Keyser GR Kgaile MT Kgoadi A Khumalo KE Kilner MD Kota JC Kraamwinkel AC Kruger S Kruger J Lamb LC Lambrechts LM Lamola B Lötter E Louw CF Mackenzie M Mahlangu CCT Marupen-Shkaidy G Masina T Masingi N Mberle MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela DR Mogapi P Mohanlal L Moolman LE Mostert VM Movshovich M Mpungose A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni ST Ngcamu LM Nkanza C Nöthling PD Novotny M Nxumalo AN Nyatumba MB Nzimande A October L Odendaal N Paige AS Parry GR Penfold SE Phajane M Philippides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts BJ Rule S Rule G Sader H Samsodien DA Serumula KE Shepherd ZK Sibeko N Singh N Singh-Nogueira CF Sieberhagen P Singh S Sithole J Smit C Smith P Soni MP Spalding MW Strauli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali N van Vuuren JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warrington J Watson M Wessels AWR Westwood RH Wilson JS Whitehead KD Wolmarans

IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS AND/
OR PROSECUTIONS

STATEMENT: APPLICATION TO CROSS-EXAMINE

I, the undersigned.

ASMITA THAKOR

do hereby make oath and state that:

INTRODUCTION

1. I am an adult female attorney practising as a Partner at Webber Wentzel at 90 Rivonia Road, Sandton. I am the attorney of record for the families and survivors of apartheid-era crimes (known as the "**Calata Group**").
2. The facts contained in this statement are within my own personal knowledge unless the context indicates otherwise and are to the best of my knowledge true and correct.
3. I depose to this statement on behalf of my clients, and also Mr Anton Rossouw Ackermann ("**Mr Ackermann**"), who we represent in these proceedings. I am duly authorised to do so.
4. This statement is made in support of an application in terms of Regulation 8(3) of the Commission's Regulations read with Rule 3.7 of the Commission's Rules to cross examine Advocate Menzi Simelane ("**Mr Simelane**") when he testifies before the Commission on 10 March 2026.

ISSUES ARISING FROM THE STATEMENT

5. Mr Simelane has filed a statement with this Commission. The statement is dated 27 October 2025, but I do not know when it was filed.

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6. The Calata Group wishes to put questions to Mr Simelane in relation to the following aspects arising from his statement:
 - 6.1 The need for the TRC cases and the composition of the prosecution team to be discussed at the Directors General of the Justice, Crime Prevention and Security (JCPS) Cluster ("DG Cluster") (para 19 and other paras).
 - 6.2 Why the presence of Adv Ackermann SC as the lead prosecutor on the TRC cases was of any concern to the DG Cluster (paras 20 - 22).
 - 6.3 The basis of the claim that he was an "apartheid prosecutor" (paras 20 and 23) and the actual reasons for the making of such claims.
 - 6.4 Why it was any business of the DG Cluster to interrogate the prosecutorial strategy of the NPA in respect of the TRC cases; and who might be subject to prosecutions (para 37 – 41 and other paras).
 - 6.5 Why the Ministers of the cluster felt it necessary that "*the Minister of Justice engage with the NDPP about having a framework focussed solely on the post TRC matters*" (para 43).
 - 6.6 What were the called "*security risks inherent*" in the TRC cases and why they necessitated the Ministers reporting to the National Security Council (para 44).
7. The Calata Group wishes to put questions and dispute the following claims by Mr Simelane:
 - 7.1 That he never engaged with Adv Mpshe SC regarding the removal of Ackermann from the TRC cases, because there was no need as the issues were resolved with Adv Pikoli (para 47).
 - 7.2 That he never disagreed or stopped anything relating to prosecutions and that he strictly complied with s 179(5) of the Constitution (paras 48 – 52 and other paras).
 - 7.3 That "*quite clearly the NPA did have investigation capacity*" (para 53).

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- 7.4 That a request to remove Ackermann from the TRC cases was not tantamount to stopping prosecutions; and the claim that Adv Pikoli agreed to so remove him from those cases (para 58).
- 7.5 That the DGs Cluster could never have been involved in stopping or attempting to stop any prosecution (para 59).

ISSUES IMPACTING ACKERMANN

8. Mr Ackermann is a senior counsel, and a former Special Director of Public Prosecutions in the Office of the National Director of Public Prosecutions ("NDPP").
9. On 4 and 5 March 2026, Mr Ackermann appeared before the Commission, where he gave evidence. He is set to continue his evidence on 6 March 2026.
10. During his evidence Mr Ackermann disputed certain allegations contained in the statement of Mr Simelane. The allegations appear from paragraphs 20 to 59 of Mr Simelane's statement and are set out above in paras 6.2, 6.3 and 7.1 and 7.4.
11. Considering the seriousness of the allegations that Mr Simelane makes against Mr Ackermann, it would be prudent to permit counsel to cross-examine Mr Simelane to test the veracity of the allegations he makes against Mr Ackermann.

ISSUES IMPACTING PIKOLI

12. Mr Pikoli is an advocate of the High Court; he was appointed as the National Director of Public Prosecutions from 1 February 2005. On 23 September 2007, Mr Pikoli was suspended from his post by then President Mbeki.
13. Mr Pikoli asserts that his suspension was motivated *inter alia* by his determination to pursue prosecutions of apartheid-era perpetrators who had not applied for amnesty or had been denied amnesty by the TRC.
14. Mr Pikoli disputes the claim of Mr Simelane that while he was Director-General of the Department of Justice and co-chair of the DG Cluster, he penned a memorandum motivating for the dissolution of the DSO (para 24). Indeed, one of the charges advanced against Pikoli at the Ginwala Commission was based on his disagreement with Minister Mabandla on this question.

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15. Mr Pikoli disputes Mr Simelane's claim that other DGs in the DG Cluster knew him "from the time that they grew up together in the same area in Gqeberha" (para 24).
16. Mr Pikoli disputes the claim of Simelane that he attended a DG Cluster meeting with Ackermann (paras 26 – 28). Mr Pikoli never attended such meetings with Ackermann.
17. Mr Pikoli disputes the claim that the cluster meeting descended into disorder (para 35). Mr Pikoli will state that no cluster meeting he attended descended into disorder or chaos.
18. Mr Pikoli disputes Simelane's claim that the 'political military council' was discussed at a cluster meeting (para 37). Mr Pikoli asserts that was never any mention of the Political and Military Committee in these meetings.
19. Mr Pikoli disputes the claim of Simelane that he was present when Ackermann was said to have stated that he will prosecute one member of the liberation movement and then one from the apartheid security forces (para 37). According to Mr Pikoli this was a claim that the late SAPS Commissioner Selebi used to make.
20. Mr Pikoli disputes the claim of Mr Simelane that the DG Cluster played no role in the impeding of the TRC Cases when in fact that group insisted he could not act on any TRC case without their recommendation.
21. Mr Pikoli disputes the claim by Mr Simelane that he acceded to the demand of the DG Cluster "*that if the members insisted on the removal of Ackerman from the TRC cases, then he will remove him but that he will seek his counsel anytime if he needed it*" (para 39); and that there was no need to remove Ackermann as the "issues were resolved with Pikoli" (paras 47 and 58).
22. Mr Pikoli disputes the claim by Mr Simelane that the NPA "*quite clearly had investigative capacity*" in respect of the TRC cases which emerged at a meeting that Ackermann and Pikoli were present at (para 53).
23. We also wish to probe the role played by Mr Simelane in the suspension of Mr Pikoli and whether the latter's conduct in relation to the TRC cases was a reason for his removal.

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24. It is accordingly prudent to permit our counsel to cross-examine Mr Simelane to test the veracity of the claims he makes against Mr Pikoli.

OTHER MATTERS

25. We wish to seek Mr Simelane's views on the finding of the Ginwala Commission that he gave contradictory evidence and deliberately withheld important information from the Commission, thereby attempting to mislead it.
- 25.1 Given that Mr Pikoli's handling of the TRC cases was one of the complaints before the Ginwala Commission, whether the aforesaid finding should be considered when evaluating his evidence on this topic.
26. We also seek his response to the assertion of Lukhanyo Calata representing the Calata Group that the "*arrival of Adv Simelane at the helm of the NPA was to doom the TRC cases to further neglect*" (Calata Group, Bundle 1, p 125, para 316).
27. We wish to know from Mr Simelane why one of the first steps he took as NDPP was to remove Adv Macadam from the TRC cases and place him on other duties. (Calata Group, Bundle 1, p 125 - 126, para 317). Macadam was steeped in the TRC cases and was well placed to take them forward.
28. Menzi Simelane appeared before the Justice Portfolio Committee on 12 April 2010 where he confirmed that the NPA was not prosecuting any TRC cases stating "*that there were no cases that the NPA was currently prosecuting regarding post TRC matters. The reason being that the dockets were still with the police for investigation.*"
- 28.1 We wish to ask Mr Simelane why he did not disclose to the Committee that an investigating officer (to cases such as Nokuthula Simelane) had only been appointed earlier in 2010 after many years of neglect.
29. We wish to dispute Simelane's claim at the Justice Portfolio Committee on 20 March 2011 that the issues around the investigation of the TRC cases "*was an old matter as there were no problems now.*" (Calata Group, Bundle 1, p 128, para 323).

At

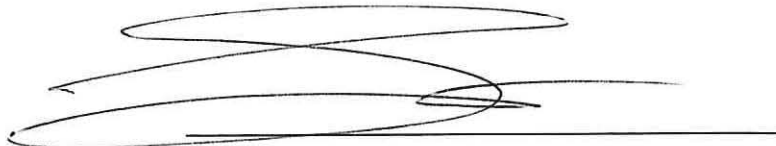
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CONCLUSION

30. These issues lie at the heart of the Commission's terms of reference.
31. It is in the best interests of the work of the Commission that the Calata Group's Counsel be permitted to cross-examine Mr Simelane.
32. In the light of the above, I humbly request the Chairperson to permit the Calata Group's counsel to cross-examine Mr Simelane when he appears before the Commission on 10 March 2026 or on any other date permitted by the Chairperson.


ASMITA THAKOR

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at JOHANNESBURG on 6 MARCH 2026, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.


COMMISSIONER OF OATHS

Full Names:

Business Address:

Designation:

LAURRAINE ZANELE PHAKADI

ID No. 880317 0395 080

Kommissaris van Ede / Commissioner of Oaths
Praktiserende Prokureur

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