

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

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**STATEMENT: APPLICATION TO CROSS-EXAMINE GEOPHREY LEDWABA**

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I, the undersigned.

**ASMITA THAKOR**

do hereby make oath and state that:

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**") and the former Special Director of Public Prosecutions heading the Priority Crimes Litigation Unit ("**PCLU**"), Advocate Anton Ackermann SC.
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, 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 Rule 3.7 of the Commission's Rules and Regulations 8(3) of the Commission's Regulations to cross examine Mr Geophrey Ledwaba ("**Mr Ledwaba**" or "**Ledwaba**").

**THE APPLICATION**

5. Mr Ledwaba filed an affidavit with the Commission. His affidavit is dated 14 April 2026, and he gave oral evidence before the Commission on 22 April 2026.

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6. Our clients wish to put questions to Mr Ledwaba and dispute his evidence in relation to the following aspects arising from his evidence.

**The Special National Projects Unit dealing with TRC cases**

7. In his statement, Mr Ledwaba states that the Special National Projects Unit ("**SNPU**") within the Directorate of Special Investigation ("**DSO**") had been dealing with the following 14 TRC cases (also attached as MGL1 to Mr Ledwaba's statement):

- |      |                       |   |
|------|-----------------------|---|
| 7.1  | <i>"BLACKCATS</i>     | <i>Killing of ANC members by IFP in Ermelo.</i>                           |
| 7.2  | <i>COSAS 4</i>        | <i>Murder of 4 members of COSAS.</i>                                      |
| 7.3  | <i>CRADOCK FOUR</i>   | <i>Kidnapping/Murder of ANC members by Security Branch.</i>               |
| 7.4  | <i>DUBENI</i>         | <i>Murder of MK member by SAPS security branch.</i>                       |
| 7.5  | <i>EARLY LEARNING</i> | <i>Investigation: Bombing of early learning centre in Cape Town.</i>      |
| 7.6  | <i>FIREFLY</i>        | <i>Murder and kidnapping of Brian Ngalunga Vlakplaas Askari.</i>          |
| 7.7  | <i>LUCKY STAR</i>     | <i>Investigation into the murder of Apla members.</i>                     |
| 7.8  | <i>MAMELODI TEN</i>   | <i>Murder of 10 ANC members by N-TVL security police.</i>                 |
| 7.9  | <i>NELSON SITHOLE</i> | <i>Murder/killing of ANC members by unknown persons.</i>                  |
| 7.10 | <i>PEBCO THREE</i>    | <i>Kidnapping/murder of ANC members by SAP security branch</i>            |
| 7.11 | <i>POWELL</i>         | <i>Powell received 70 tons of weapons from Eugene De Kock.</i>            |
| 7.12 | <i>PROJACK</i>        | <i>Assassination of activist Projack in Nyanga.</i>                       |
| 7.13 | <i>STEVE BIKO</i>     | <i>Investigation into the murder of Steve Biko by SAP security branch</i> |
| 7.14 | <i>TIMOL</i>          | <i>Alleged murder of detainee, TIMOL in police detention."</i>            |

8. Our clients wish to establish from Mr Ledwaba:
- 8.1 under what legal authority, such as a Presidential Proclamation, the SNPU was dealing with the above TRC cases;
- 8.2 when was the audit conducted that identified the cases mentioned above in paragraph 7; and

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- 8.3 whether the SNPU was investigating any other TRC cases apart from the ones mentioned above in paragraph 7.
9. Mr Ledwaba's evidence regarding the number of TRC cases dealt with by the SNPU stands to be tested against the following evidence that is already before the Commission:
- 9.1 According to former NDPP, Advocate Bulelani Ngcuka, stated that after the NPA's Human Rights Investigative Unit ("HRIU") assessed the TRC cases between 1999 and 2000, he decided to transfer all TRC cases in the possession of the HRIU to the SNPU. (Ngcuka statement at para 28).
- 9.2 Around September 2000, the TRC provided a list of approximately 226 TRC cases to the HRIU (Calata Group Bundle Volume 1, para 102 at p 38). It appears that the cases were drawn from the TRC amnesty database, approximately three years before the amnesty proceedings concluded.
- 9.3 According to the former head of the SNPU, Advocate Chris Macadam, by 10 February 2003, the SNPU had identified 41 TRC cases for investigation and possible prosecution (Macadam statement at para 19, Annexure AD1 Macadam Bundle p 1428).

#### **Turf war between the SAPS and DSO**

10. In his evidence in chief, Mr Ledwaba stated, with reference to the obligation to investigate TRC cases and the turf war between the SAPS and the DSO, that "everything started" after the final TRC Report was handed to Parliament in March 2003 and following President Mbeki's speech to Parliament on 15 April 2003 (Transcript 22 April 2026, page 17).
11. Our clients wish to know how the turf war between the SAPS and the DSO impacted the TRC cases.

#### **Interpretation of section 28(1)(a) and (b) of the NPA Act**

12. In paragraphs 36 and 38 of his statement, Mr Ledwaba incorrectly quotes parts of sections 7 and 28 of the NPA Act which deals with the establishment of

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Investigating Directorates (section 7) and the powers of Investigating Directors to conduct inquiries (section 28). Mr Ledwaba presents the provisions in his statement, and subsequently in his evidence in chief, as if the provisions were in force at the time that the DSO came into operation in 2001. The following are extracted from Ledwaba's statement:

"36. Section 7 of the NPA Act reads thus:

7 Investigating Directorates

(1) .....

(1A) There is hereby established, in the Office of the National Director, an Investigating Directorate to be known as the Directorate of Special Operations to investigate, and carry out, any functions incidental to investigations-

(a) relating to serious, high-profile or complex corruption, commercial or financial crime and organised crime cases-

(i) referred to the Investigating Director by the National Director in terms of section 28 (1) (b); or

(ii) referred to the Investigating Director in terms of section 28(1)(a) or 28(13)

(b) relating to additional related statutory offences or categories of statutory offences, including contraventions of-

(i) the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);

(ii) the Prevention of Organised Crime Act, 1998 (Act 121 of 1998)."

And:

"38. The authorising sections are quoted below and state thus:

Section 28(1)(a)

If the Investigative director has reason to suspect that a "SPECIFIED OFFENCE" has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she MAY conduct an investigation.

Section 28(1)(b)

If the National Director refers a matter in relation to the alleged commission of a specified offence to the Investigating Director, the Investigating Director SHALL conduct an investigation or a preparatory investigation as referred to in subsection 13, on the matter."

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13. It is to be noted that on 5 December 2000, the NPA Amendment Act 61 of 2000 was assented to by the President to establish the DSO (Ledwaba bundle pp 74 to 91). By amendment to section 7 of the NPA Act, the DSO was established with the aim to:

“1(a) ...

- (i) investigate, and to carry out any functions incidental to investigations;
  - (ii) gather, keep and analyse information; and
  - (iii) where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings, relating to
    - (aa) offences or any criminal or unlawful activities committed in an organised fashion; or
    - (bb) such other offences or categories of offences as determined by the President by proclamation in the *Gazette*.
- (b) For the purpose of subparagraph (aa), 'organised fashion' includes the planned, ongoing, continuous or repeated participation, involvement or engagement in at least two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are related by distinguishing characteristics.”

14. The DSO's mandate was not to investigate and prosecute “*serious, high-profile or complex corruption, commercial or financial crime and organised crime cases*” as alleged by Mr Ledwaba. It will be put to him that the DSO's mandate as set out in section 7(1) of the National Prosecuting Authority Amendment Act 61 of 2000 was to investigate and prosecute offences or any criminal or unlawful activities committed in an organised fashion.
15. In respect of the power of the DSO to conduct inquiries (i.e. investigations and prosecutions), Mr Ledwaba's evidence is that section 28(1)(a) of the NPA Act gave him, as the Investigating Director of the DSO, a discretion to authorise or decline a DSO investigation where a matter fell within what he describes as the DSO's “*core mandate*” or a “*specified case*” as defined by the NPA Act. Mr Ledwaba incorrectly interpreted that mandate as being confined to serious, high profile or complex corruption, commercial or financial crimes, and organised crime-related matters.

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16. By contrast, Mr Ledwaba testified that section 28(1)(b) of the NPA Act gave the NDPP what he described as "*super powers*" to refer matters to the DSO even if they did not fall within the ordinary mandate of the DSO (Transcript 22 April 2026, page 70).
17. In paragraphs 61 to 68 of his statement, Mr Ledwaba recalls the various requests that Advocates Macadam and Ackermann of the PCLU made to him for the appointment of DSO investigators to TRC cases:
  - 17.1 The first request for DSO investigators was made by Adv Macadam in May 2003. This request was made under section 28(1)(a) of the NPA Act. Mr Ledwaba advised Adv Macadam that he (Ledwaba) had no authority to assist under section 28(1)(a), and that the proper route was to approach the NDPP under section 28(1)(b).
  - 17.2 On or about 15 July 2003, Advocates Macadam and Ackermann again requested Mr Ledwaba to assist the PCLU with the investigation of TRC cases by declaring them as DSO projects. Mr Ledwaba provided the same response.
  - 17.3 Mr Ledwaba alleged that the interpretative disagreement must be understood against the background of his professional relationship with the Advocates Macadam and Ackermann. He stated that previously they were senior to him but by 2003 he was senior to them and they were not willing to accept advice from someone who they regarded as their junior.
  - 17.4 Mr Ledwaba states that eventually the penny dropped in December 2003, and the two Advocates followed his previous advice and approached NDPP Ngcuka under section 28(1)(b).
18. Our clients wish to question Mr Ledwaba on his interpretation of sections 28(1)(a) and (b) of the NPA because we understand that both sections use the same statutory threshold, namely a "*specified offence*".
19. This issue was raised directly by Commissioner Gabriel, who put it to Mr Ledwaba that if the NDPP could form the view that the TRC matters were

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"specified offences" for purposes of section 28(1)(b), it was not clear why Mr Ledwaba did not form the same view for purposes of section 28(1)(a). Mr Ledwaba's answer was that this was how the DSO interpreted its mandate at the time (Transcript 22 April 2026, page 97 to 100). Our clients wish to establish whether Mr Ledwaba accepts that section 28(1)(b) did not dispense with the requirement that the matter referred by the NDPP must relate to a "specified offence".

20. It will be put to Mr Ledwaba that the true distinction between sections 28(1)(a) and 28(1)(b) is not the nature of the offence, but rather the person who initiates the process and the consequences of that initiation.
21. It will be put to Mr Ledwaba that his interpretation improperly elevated an internal DSO understanding above the wording of the NPA Act. It will further be put to him that an internal administrative understanding could not lawfully narrow the statutory powers conferred by section 28.
22. If TRC matters could be treated as "specified offences" when referred by the NDPP under section 28(1)(b), then they were not legally incapable of being treated as "specified offences" by the Investigating Director under section 28(1)(a). It will be put to Mr Ledwaba that his explanation on those sections were illogical and consequently frustrated the investigation of the TRC cases.

**Section 28(1)(b) issued directives from the NDPP authorising DSO investigations**

23. In paragraphs 78 to 81 of his statement, Mr Ledwaba said that Mr Ngcuka acting in terms of section 28(1)(b) on 8 December 2003 authorised investigations in the following matters (also set out in annexure MGL4 of Mr Ledwaba's affidavit):
  - 23.1 the Pebco 3 matter;
  - 23.2 the Brian Ngulunga matter;
  - 23.3 the Motherwell 4 matter; and
  - 23.4 the Chikane matter.

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24. Mr Ngcuka also issued a further directive on 26 February 2004, in terms of section 28(1)(b), directing Mr Ledwaba to investigate two matters (set out in annexure MGL5 of Mr Ledwaba's affidavit) :
- 24.1 the St James matter; and
- 24.2 the Heidelberg Tavern matter.
25. It appears that little or nothing was done to progress the matters, notwithstanding the issuing of the two directives in terms of section 28(1)(b) of the NPA Act. Our clients wish to know why Mr Ledwaba did not follow up on the progress of these cases.
- 25.1 Out of the 6 cases only the Chikane matter proceeded. According to Adv Ackermann this matter was previously investigated and was ready to proceed in 2004 but was halted following the intervention of the Minister of Justice in November 2004. A plea and sentence agreement was struck in 2007.
- 25.2 The PEBCO 3 matter remains unfinalized today, some 23 years after the proclamation was issued, notwithstanding the issuing of an indictment in 2004. All suspects bar one have died. An inquest is scheduled to take place in October 2026.
- 25.3 The Brain Nqulunga matter was only referred to the DPCI on 17 May 2021 (DPCI PowerPoint presentation to the Justice Portfolio Committee, dated 20 May 2025), and a decision to re-open the inquest was recommended. The matter is listed under "Other Decisions/Pending Inquests" (Annexure G Adv Shubnum Singh's affidavit at p 395).
- 25.4 The accused in the Motherwell 4 matter were charged and convicted in 1996, years prior to the NDPP's proclamation. It appears that the investigation arising from this case was the role of former police General Nick van Rensburg in ordering the killing of the Motherwell 4 (Macadam bundle p 1458). There is no evidence that this investigation proceeded.

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- 25.5 In relation to the Heidelberg Tavern and the St James Church Massacre matters, Adv Macadam in an email dated 10 December 2008 to Dr Ramaite (annexure MJM6 of Adv Mpshe statement at p 1688) reported that SAPS still had to conduct a series of investigations. This is approximately four years after Mr Ngcuka issued the second directive authorising the DSO to investigate the matters.
26. It will be put to Mr Ledwaba that, notwithstanding the two section 28(1)(b) directives issued by Mr Ngcuka, save for the Chikane matter which did not require further investigation, the cases were not in fact investigated by the DSO.
27. It will be put to Mr Ledwaba that the real reason these cases did not progress was because of the moratorium imposed by Minister Mabandla on the investigation and prosecution of TRC cases during 2004, pending the finalisation of the NPA's special approach to the TRC cases (amending the Prosecution Policy).
28. Our clients wish to establish whether Mr Ledwaba received any progress reports, whether formal or informal, in relation to each of the six matters.
29. We wish to enquire from Mr Ledwaba whether there was a duty on him to receive reports on the progress of the aforesaid investigations. Mr Ledwaba stated in his evidence in chief that reporting was "informal" and that although the matters were DSO projects, they remained "the baby of the National Director" (Transcript 22 April 2026, bottom of page 94 and beginning of page 95).
30. Our clients wish to establish how Mr Ledwaba reconciles this evidence with his role as Head of Operations and Investigating Director of the DSO. If the matters were authorised as DSO projects and placed within the DSO project-management system, our clients wish to understand why there was no formal reporting to him, or to any other DSO official responsible for operational oversight.
31. Our clients wish to know whether there was any written policy, directive, project-management rule, reporting protocol, memorandum, or practice note regulating progress reports for section 28(1)(b) investigations or DSO investigations more

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generally. If there was no such policy or protocol, our clients wish to establish how the DSO would ensure that these investigations involving very serious crimes were being attended to.

### **Establishment of the PCLU and handover of TRC cases to the PCLU**

32. In his statement, Mr Ledwaba states that, following the NDPP's decision to declare TRC cases as priority crimes that would fall under the PCLU, all TRC cases located within the SNPU were transferred to the PCLU. This meant that the DSO was no longer responsible for the investigation of TRC cases.
33. Mr Ledwaba relies on his memorandum of 15 July 2003 addressed to CIO Leask (annex MGL2 to Ledwaba's statement) records that:
  - 33.1 Ledwaba decided that SAPS should take over all the TRC cases that were handled by the SNPU (para 38.1 of his statement);
  - 33.2 The SNPU files were to be closed off;
  - 33.3 All material was to be given to the PCLU;
  - 33.4 The storeroom used for TRC material was given to the PCLU;
  - 33.5 Two SNPU researchers would be transferred to the PCLU.
34. It will be put to Mr Ledwaba that the handover from the SNPU to the PCLU created an obvious operational gap. While the TRC dockets and files, and two researchers were transferred to the PCLU, and even though the PCLU had investigative capacity, no investigators were transferred to the PCLU.
35. In paragraphs 43 and 44 of his affidavit Mr Ledwaba states that the Presidential Proclamation which created the PCLU mandated it to "direct investigations and prosecutions in relation to various priority crimes". From this, Mr Ledwaba concludes that the PCLU was "therefore clothed with both investigative and prosecutorial powers."
36. Our clients' wish to question Mr Ledwaba's interpretation of the Proclamation. The Proclamation appears to have authorised the PCLU to manage, direct and

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supervise investigations and prosecutions in relation to identified priority crimes. It did not constitute the PCLU as an investigative directorate equivalent to the DSO, nor did it appoint investigators to the PCLU.

37. It will be put to Mr Ledwaba that the correct interpretation of the Proclamation is that the PCLU was empowered to direct and manage investigations and prosecutions in relation to priority crimes, but that the actual investigative work had to be performed by investigators from SAPS and/ or the DSO.
38. It will also be put to Mr Ledwaba that Mr Ngcuka's declaration of TRC cases as priority crimes to be dealt with by the PCLU did not mean that the DSO must stop investigating TRC cases. There was no direction from the NDPP that the DSO must cease its work on the TRC cases.
39. In paragraph 45 of his statement, Mr Ledwaba states that it was the understanding "discussed in the NPA EXCO Management meetings", where Dr Ramaite was in attendance, that investigations of PCLU cases would be conducted by SAPS in accordance with SAPS' constitutional mandate. Our clients wish to establish when this NPA EXCO Management meeting, or meetings, took place and whether there are any minutes or records.

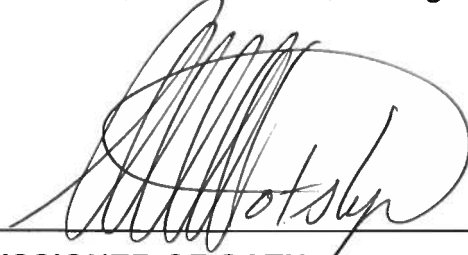
## CONCLUSION

40. The issues outlined above lie at the heart of the Commission's terms of reference and must be contested through cross-examination.
41. It is in the best interests of the work of the Commission that the Calata Group's Counsel be permitted to cross-examine Mr Ledwaba.
42. In the light of the above, I humbly request the Chairperson to permit counsel for the Calata Group and Ackermann SC to cross-examine Mr Ledwaba.

  
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**ASMITA THAKOR**

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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 Sandton on 25 June 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: **MOJALEFA CLIFTON MOTSHEPE**  
Business Address: **COMMISSIONER OF OATHS  
PRACTISING ATTORNEY R.S.A  
2 PYBUS ROAD, FIRST FLOOR,  
SANDTON, JOHANNESBURG, 2196**  
Designation: **FAIRBRIDGES ATTORNEY**

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