

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

SWORN STATEMENT

I, the undersigned

PENUELL MADUNA

do hereby state under oath that:

1. I am a former Minister of Justice and Constitutional Development.
2. The facts deposed to in this affidavit are within my personal knowledge and are true and correct.
3. On 29 May 2025, the President of the Republic of South Africa, Mr Matamele Cyril Ramaphosa, issued Proclamation Notice 264 of 2025 establishing a 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 ("**TRC**") Cases ("**the Commission**").
4. The Commission's Terms of Reference require that the Commission must inquire, make findings, report and make recommendations concerning:

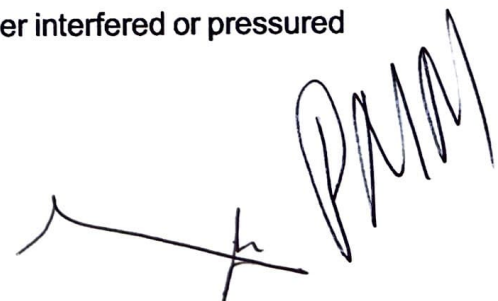
 

"1.1 ...whether, why and to what extent and by whom, efforts were made to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases."; and

"1.2 ...whether any members of the South African Police Service or the National Prosecuting Authority improperly colluded with such attempts to influence or pressure them.",

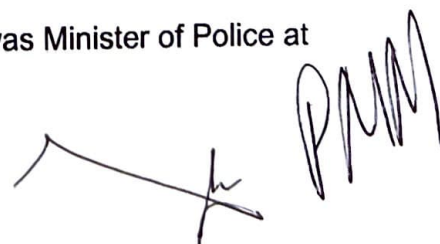
amongst other things.

5. I was the Minister of Justice and Constitutional Development ("**Minister**") from 1999 to 2004. I have been invited by the Commission to comment and provide my knowledge in respect of the issues raised in paragraph 4 above, *qua* my tenure as a Minister.
6. As a general remark, I have no knowledge of any collusion, influence or pressure on members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases nor do I know of any collusion in that respect. I have also never devised, nor enforced, any moratorium to the investigation of prosecution of any TRC cases. As I understand it, the moratorium that is alleged to have been put in place against the prosecution of TRC cases was not an official, documented moratorium, but a practical stance adopted until such time the Prosecution Policy amendment was finalised. For the record, I restate that I have never interfered or pressured

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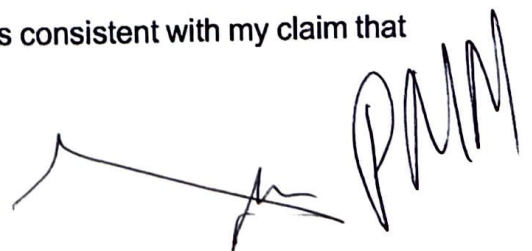
anyone to not investigate or prosecute the TRC cases because of this so-called moratorium.

7. Further, I have not been implicated in such malfeasance. In preparation to respond to the Commission's request, I had discussions with Advocate Bulelani Ngcuka and Advocate Vusumzi Pikoli, who were the Director-General in my department and the National Director of Public Prosecutions, respectively, during my tenure as Minister. They confirmed that I never interfered with their work in relation to TRC cases.
8. By way of background context to TRC amnesty issues, I represented the African National Congress in the Convention for a Democratic South Africa. This was a negotiating forum established in 1991 to end apartheid and transition South Africa to a multiracial democracy.
9. The Indemnity Act, 35 of 1990, which Act sought to regulate similar subject matter to the impugned "*Prosecuting Policy and Directives relating to the Prosecution of Offences emanating from Conflicts of the Past and which were committed on or before 11 May*" policy, came about as a result of those negotiations. That was the extent to which I became involved in any discussions and conduct relating to apartheid crimes. This Act has since been repealed by the Promotion of National Unity and Reconciliation Act, 1995.
10. It has been suggested at paragraph 392 of an affidavit deposed to by Mr Lukhanyo Calata, which I am advised is the basis of the Commission's Terms of Reference, that Mr Charles Ngqakula, who was Minister of Police at

Handwritten signature and initials, likely of the Minister of Police at the time, Mr Charles Ngqakula.

the time, and I met with a delegation of the South African Defence Force generals led by one Mr Geldenhuys in Cape Town on 17 February 2003.

11. From the context of the relevant paragraphs in that affidavit, some of which I refer to in a moment; this delegation would have been generals that served under the apartheid regime.
12. It is claimed that this delegation petitioned for post TRC legislation granting new blanket amnesty with no disclosure of crimes committed during apartheid being made. It is suggested that we seemed to insist on a policy of amnesty following full disclosure.
13. I confirm that I met with various stakeholders in Cape Town by virtue of my office and I would have discussed matters related thereto. I also confirm that I had such discussions at various times, though I cannot confirm the date and that I had them with this particular delegation. I do however confirm that that is indeed the position that government adopted and I have always insisted that all amnesty be granted following full disclosure as the law required.
14. To digress momentarily, the claimed request by this SADF delegation is consistent with the non-accountability position adopted by the erstwhile apartheid president, Mr PW Botha, who stated he would not apologise for any apartheid crimes because he was "*fighting for my people*".
15. Paragraphs 393 and 394 of the same affidavit note that there was no resolution between government and those generals. This is consistent with my claim that

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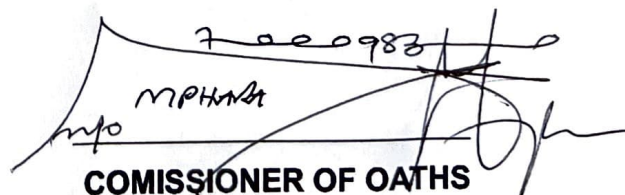
I have always insisted on principle and application of the law without fear or favour.

16. I confirm that there has never been a decision made by me, or in my presence, to afford any amnesty outside the legal prescripts, regardless of whether such persons fought for or against the apartheid regime. This is despite some contending that we intervene by providing blanket amnesty to our comrades without them making full disclosure of the crimes they may have committed. The law simply did not provide for this. We had advised some of our comrades to go through the TRC Commission amnesty route, but some chose to approach courts instead.
17. This is the extent of my knowledge regarding the Terms of Reference referred to in paragraph 4 above.


PENUELL MADUNA

SIGNED AND SWORN TO BEFORE ME AT SANDTON ON THE 08 DAY OF November 2025, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENT OF THIS AFFIDAVIT AND HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND CONSIDERS THE OATH BINDING ON HIS CONSCIENCE.

20 SHEPHERD Ave
 KENSINGTON-B
 RANDBURG SAPS


COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE SERVICE
CRIME OFFICE
2025 -11- 08
RANDBURG
SUID-AFRIKAANSE POLISIEDIENS

**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**

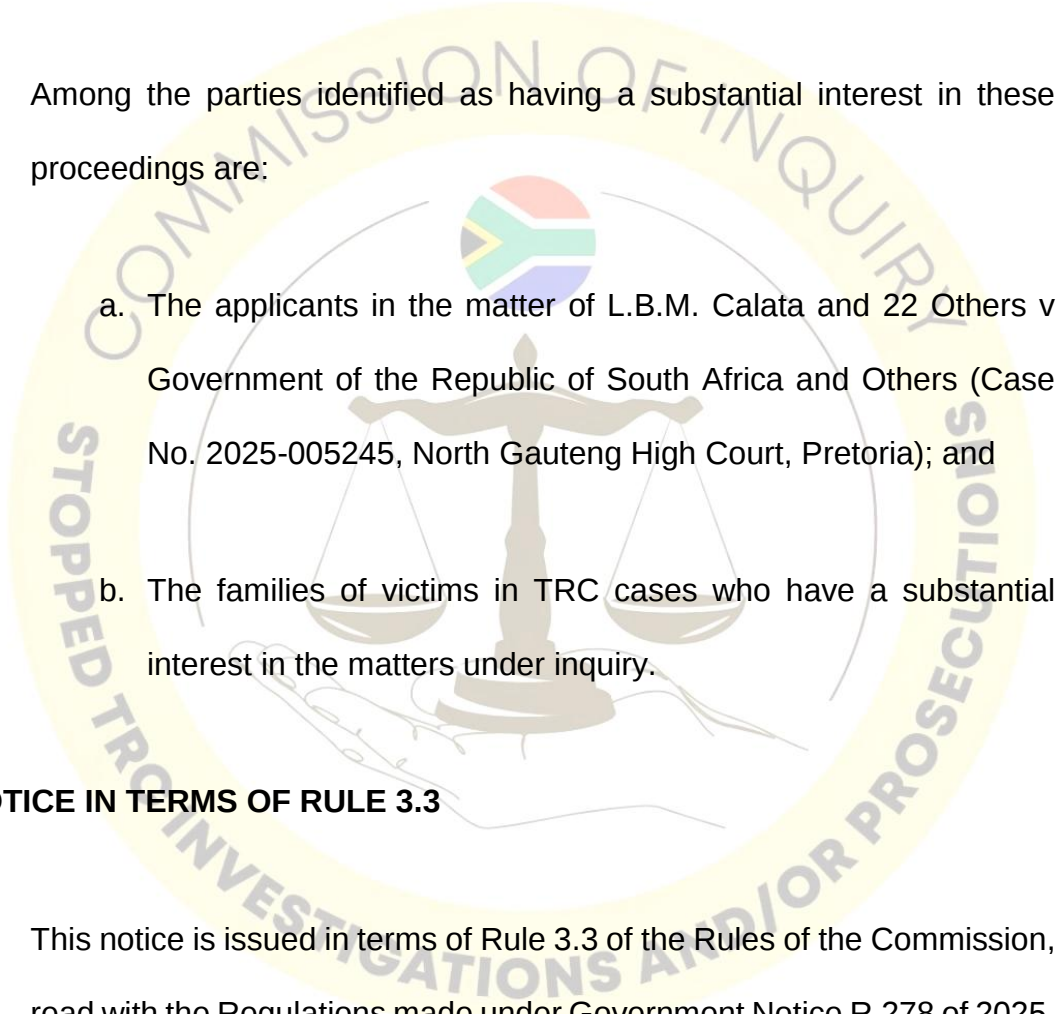
TO: MADUNA PENUELL

EMAIL: penuelm@maduna@gmail.com

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.

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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 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"

Developments post the amendments to the Prosecution Policy

148. Once the new guidelines had been issued in terms of the Prosecution Policy amendments, this should have brought an end to the so-called moratorium imposed on the TRC cases. This was not to be. The clampdown continued, with renewed vigour.
149. In the NPA Annual Report of 2005/06, Pikoli indicated that he was "sad to report" that "not much has been achieved" with regard to the TRC cases, despite all their attempts to take them forward:

*“Following Government’s response to the final Report of the TRC, and because it is important for the prosecuting authority to deal with these matters on a uniform basis in terms of specifically defined criteria, the National Director, with the concurrence of the Minister for Justice and Constitutional Development and after consultation with the various Directors of Public Prosecutions issued prosecution policy and policy directives in terms of section 179(5)(a) and (b) of the Constitution regarding the handling of such cases arising from conflicts of the past. This prosecution policy and policy directives, which must be observed in the prosecution process, were tabled in Parliament towards the end of 2005 and came into operation on 1 December 2005. During January and February 2006, the NPA briefed the Portfolio Committee on Justice and Constitutional Development and the Committee on Security and Constitutional Affairs of the National Council of Provinces regarding the contents of these directives. **I am sad to report, as at the time of writing this report, that not much has been achieved in this regard despite all the attempts that have been made in taking this matter forward.**” (Bold added)*

150. Significantly, the annual report also confirmed that the TRC cases had been

“placed on hold” pending the approval of the prosecution guidelines:

“In late 2004, the Acting National Director requested that prosecutions for TRC cases be placed on hold pending the formulation and approval of prosecution guidelines relating to these matters. The guidelines were 2

only finally approved in early 2006. The PCLU, as a result of complaints by various persons, identified at least 15 cases which warrant further investigations in order to determine whether prosecutions are justified. On an ongoing basis, the PCLU receives requests from victims to look into cases where amnesty has been refused or not applied for. Where these matters can be followed up without further investigations and where no prosecutions are warranted, they are disposed of.

Seven such matters have been dealt with in this manner. In 2006, the Directors of Prosecution: Mthata and Pretoria seconded two Senior State Advocates to the PCLU to assist with these matters.” (Bold added)

151. Copies of the relevant pages of this annual report are annexed hereto marked **FA28**. A copy of the full report can be made available on request.
152. While the annual report confirmed on a *post facto* basis that the suspension or moratorium on the TRC cases was imposed in late 2004, in reality it was already in place during 2003, as set out above.
153. Interestingly the decision to halt the TRC cases was styled as a “request” by the Acting NDPP. It was not disclosed who this request was directed to.
154. With the exception of the Frank Chikane attempted murder case, which did not require further investigation, the PCLU was unable to pursue any other TRC cases.
155. According to Ackermann, the SAPS and DSO persisted in their refusal to provide investigators. It also proved difficult to even convene meetings of the ITT (referred to in Part B of the amendments) who were “*meant to advise the PCLU on what cases to pursue.*” Pikoli had hoped that the ITT, particularly the

SAPS and the NIA would provide investigative and intelligence support for these cases, however, this support was “*never provided.*”

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156. Once the guidelines were issued in December 2005, Ackermann wished to proceed with the five cases he had identified that had good prosecution prospects and the 11 cases which required substantial investigation. These cases were identified as “*major priorities*” for the PCLU for the 2006 – 2007 period. In addition, during 2006 he was getting more requests from victims’ families for further investigations in their cases.
157. According to Pikoli, once the Prosecution Policy amendments became effective in December 2005, he reviewed the available evidence implicating the three suspects in the Chikane attempted murder case, which, in his opinion warranted prosecution. None had applied for amnesty, so he gave the initial instruction to proceed with the prosecution in February 2006.
158. The NPA made a presentation to the Justice Portfolio Committee on 8 March 2006, a copy of which is annexed hereto marked **FA29**. In relation to its performance in respect of the TRC prosecutions it disclosed the following at slide 39:

"PERFORMANCE AGAINST TARGETS: 2004 / 2005 1. TRC

Prosecutions

- *Audit of 300 cases on hand in NPA structures.*
- *Closure of 167 cases. No grounds for prosecution.*
- *Prosecutions instituted in S v Terreblanche, S v Blani and S v Nieuwoudt & 2 Others.*
- ***Further prosecutions put on hold in November 2004 pending the formulation of guidelines.***
- *Assistance provided to reconvene Motherwell amnesty hearing.*
(Bold added)

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159. In the same presentation dealing with performance targets for the year 2005/06 the following was noted at slide 43:

"PERFORMANCE AGAINST TARGETS: 2005 / 2006 1. TRC

Prosecutions

- *Failure to finalise guidelines **results in no further prosecutions being instituted.***
- *Late 2005 Constitutional Court sets aside TPD and Supreme Court of Appeal rulings in respect of jurisdiction for conspiracies for external crimes in S v Wouter Basson.* (Bold added).

160. In March 2006, Ackermann again met with the representatives of the Simelane family, who in addition to the crimes of kidnapping and murder, wished the NPA to charge certain suspects with

torture, as a crime against humanity in terms of customary international law, since such crimes never prescribe. Ackermann had to advise them that he was unable to take the case forward

“as there were no investigators attached to the PCLU”, and his requests to the SAPS and the DSO for competent and experienced investigators had fallen on deaf ears.

161. The Simelane family lawyers wrote to Pikoli, the NDPP at the time, requesting him to reach out to the SAPS and the DSO in order to secure competent investigators for the PCLU as a matter of urgency. These efforts were not successful. Thereafter Ackermann urged the family lawyers to seek an inquest rather than a prosecution. This is because he realised that there would be no investigations, let alone prosecutions *“taking place in the political context that prevailed at the time,”* as set out in his affidavit in *Nkadimeng 2* (TN8 at p217) (FA8). At that time the family was reluctant to pursue an inquest when the evidence warranted a prosecution.

162. Annex RCM10 (at p835) to Macadam’s affidavit (FA5) reveals that on 30 October 2004, Ackermann addressed an internal memorandum to Pikoli and Ramaite in order to respond to a request made by the “TRC Committee” on 25 October 2006 to furnish details regarding all the cases closed by the PCLU, and

in particular what led to the prosecution of one Blani. The “TRC Committee” was presumably either the Interdepartmental Task Team or the Inter-Ministerial Committee, referred to above. The memorandum disclosed that some 27 cases had been closed for various reasons. Notable cases on the list included:

162.1 Death in detention of Ahmed Timol.

162.2 Death in detention of Steve Biko.

162.3 Murders committed by IFP aligned Ermelo Black Cats gang in Ermelo.

162.4 Ciskei coup d'état, also known as Operation Katzen.

162.5 General Basie Smit, former SB commander, for various offences.

162.6 Refusal of amnesty to Mbeki and 37 high ranking ANC members.

162.7 IFP Hit Squads in Esikhaweni and elsewhere in KZN.

162.8 Bombing of the Early Learning Centre and other activities of the CCB.

163. In the same memorandum, Ackermann referred to an attempt to resurrect the investigation of the TRC cases, but he objected strenuously to the planned reappointment by the SAPS of Senior Superintendent [] Britz.

“The reappointment of Senior Superintendent Britz

At its last meeting, the Committee was informed by Assistant Commissioner Jacobs that Senior Superintendent Britz would be reappointed to Investigate the dockets in possession of SAPS.

I wish to express my concern at this. Britz was a former member of the SB, who, prior to the PCLU being involved with TRC cases, assisted the OPP: Pretoria with cases involving the Liberation Movement.

Former Police Commissioner General van der Merwe had formed an organization entitled *“The Foundation for Equality before the Law”* which was intended to ensure that no further prosecutions of SB members would take place.

When I and my staff were appointed to take over the TRC cases in the DPP Office: Pretoria, we gained the firm impression that Britz was not only very sympathetic towards this organization but had regular contact with General van der Merwe.

In particular, Britz tried to persuade me and my Deputy on numerous occasions that there was a provable case of terrorism against President Mbeki arising from the landmine campaign. This was raised in the context that were SB members to be prosecuted, the President would also have to be charged. It was clear that he was against prosecutions of SB members. Despite his claims, he could never produce a docket implicating the President. At one stage, he informed me that the docket was with General van der Merwe and his legal advisor. This raises a very serious question as to how an official police docket could be retained by General van der Merwe, who was not entitled to possess police material after his retirement from SAPS.

When the issue of prosecuting SB members for the Pebco 3 incident was raised with their lawyer, he immediately indicated that he was preparing to submit a docket calling for the prosecution of the President. I can only draw the inference that sharing of information took place between Britz and Van der Merwe.

The issue of the prosecution of the President was raised at the highest level of Government and resulted in enquiries being conducted by Minister Maduna as well as members of the President's office. All parties were satisfied that the NPA had no

intention of prosecuting the President. In fact, Mr Ngcuka had been provided with a report that no such case had been established in the TRC records.

This highly embarrassing incident caused Mr Ngcuka to instruct that Britz vacate the offices of the OPP and that all the relevant SAPS dockets be removed. Britz was subsequently relocated in the SAPS Crimes Against the State Unit. He requested the PCLU to provide written confirmation of the fact that the decision had been taken not to prosecute the President. When he received the letter, he tried to persuade the PCLU to reconsider its decision.

I therefore believe that Britz lacks the necessary objectivity to be of assistance to the Committee and that his reappointment may lead to further controversy as well as the potential leaking of information to General van der Merwe.”

164. [...] The memorandum alleged that Britz was “*sympathetic*” to former members of the SB and opposed their prosecutions. According to Ackermann, Britz had leaked information and a docket to retired General Johann van der Merwe. In addition, Britz’s main preoccupation appeared to be that of agitating for a terrorism charge against Mbeki.

165. I am advised that some 12 years later when there was an attempt to pursue the TRC cases afresh by the DPCI, the late investigator, Frank Dutton (who was then the FHR’s private investigator), complained that SAPS had again appointed investigators to the TRC cases who were either former SB

members, or sympathetic to the former SB. Correspondence to this effect can be supplied on request.

166. Following Pikoli's decision to proceed with the Chikane attempted murder case, the three suspects made representations to him in terms of the Guidelines for a decision not to prosecute. Pikoli set up a team under Adv JP (Torie) Pretorius to review their representations which concluded after a few months that the three had declined to disclose the full truth. Ackermann refused to participate in this review as he viewed the process as unconstitutional. After considering the review report, Pikoli wrote to the lawyers of the three suspects in July 2006 informing them that their representations were unsuccessful, and he intended to pursue with the prosecution.

167. The decision to prosecute those implicated in the attempted murder of Chikane was the tipping point which saw the complete unravelling of the attempts by the NPA to hold apartheid-era perpetrators accountable for their crimes.

Deliberations on a further immunity

376. During July 1998, former SADF Generals called for a blanket amnesty for all sides. See the SAPA press release dated 14 July 1998 annexed hereto marked **FA54**.

377. In March 1999, the TRC denied the amnesty application of 37 ANC leaders, which included then Deputy President Mbeki.

377.1. The application was denied since it did not disclose any individual offences. See the SAPA press release dated 4 March 1999 annexed hereto marked **FA55**.

377.2. Shortly thereafter, Mbeki informed Parliament that government was considering further amnesty proposals that had been put forward by SADF generals. See the article titled 'Generals, ANC members talk about amnesty' dated 1 January 2002, annexed hereto marked **FA56**.

377.3. Mbeki also sought to adjust the TRC legislation to allow for the grant of amnesty for collective responsibility, without the need for individual disclosure. An ANC spokesperson suggested that the SADF generals had promised to "come clean" but only if they were guaranteed amnesty. See the SAPA press release titled "Mbeki wants changes to TRC rules on amnesty" dated 22 May 1999 annexed hereto marked **FA57**.

378. Bubenzer in his book in a chapter titled “*Bargaining Over the TRC’s Legacy*” detailed secret consultations between the ANC government and representatives of the SADF and the security police from 1998 until early 2004. The main aim appeared to be to reach agreement on a legislative solution on how to avoid prosecutions in the wake of the TRC. A copy of the relevant extracts from Bubenzer’s book are annexed hereto marked **FA58**.

379. According to an interview conducted by Bubenzer with former police commissioner and head of the Foundation for Equality Before the Law (**FEL**),

Johann van der Merwe, in Pretoria on 5 May 2006, former President F.W. de Klerk assumed a central role in the consultations. According to Bubenzer:

379.1. De Klerk often consulted with President Mbeki directly or with other highranking members of the government.

379.2. The FEL’s aim was to find a solution to avoid the prosecution of former members of the SAP who had not received amnesty.

379.3. Since a general amnesty was not politically or constitutionally feasible, the FEL proposed an indemnity procedure based on admission of the crime committed, but without the need to make full disclosure.

379.4. The talks continued until 2004, without an agreement being reached.

380. However, the approach proposed by FEL in relation to the '*admission of crimes but no full disclosure*' was adopted by the Pardons Reference Group established by President Mbeki under the Special Dispensation for Political Pardons in 2007.

381. According to an interview conducted by Bubenzer with former SADF General Jan Geldenhuys (**Geldenhuys**) in Pretoria on 10 May 2006, consultations between government and a group of high-ranking former generals of the SADF commenced during 1998.

381.1. Former Chief of the SADF, General Constand Viljoen was approached by Jacob Zuma, then Deputy President of the ANC with the aim of discussing questions of criminal accountability arising from the past. Viljoen referred Zuma to Geldenhuys and the Contact Bureau (known in Afrikaans as the Kontak Buro).

381.2. As with the police negotiations, these talks were aimed at finding a mutual arrangement to avoid post TRC trials through a new indemnity mechanism. The government was represented by Jacob Zuma, who became Deputy President of South Africa in June 1999 (**Zuma**).

381.3. The talks were mediated and facilitated by Johannesburg businessman

Jürgen Kögl, who was closely connected to leading ANC members.

Apart from Zuma, other high-ranking members of the ANC, such as Penuell Maduna (then Justice Minister), Mathews Phosa, Sidney Mufamadi and Charles Nqakula also participated from time to time.

On various occasions Thabo Mbeki was also present, initially in his capacity as Deputy President, and later as President.

381.4. The SADF was represented by Geldenhuys and other generals. Both sides had legal advisers present. The talks continued until early 2003, with a few follow-up meetings held in 2004.

381.5. Bubenzer explored the motivation of the government in reaching out to the SADF generals in two interviews conducted with Jürgen Kögl on 12 May 2006 and 14 June 2006. Apparently, the government was, for amongst other reasons, interested in persuading the generals to come clean on its past third force operations in KwaZulu Natal and in particular to disclose the sites of arms caches, which could be used in future political violence.

382. On 21 December 2019, investigative journalist and author, Michael Schmidt,

conducted an interview in Hartbeespoort with Major-General Dirk Marais (**Marais**), former Deputy Chief of the Army and the Convenor of the SADF

Contact Bureau. Schmidt's confirmatory affidavit is annexed hereto marked **FA59**. Schmidt writes in his book 'Death Flight' that, according to Marais, the government was seeking a *quid pro quo*. Copies of the relevant extracts from 'Death Flight' are annexed hereto marked **FA60**. Marais claimed that Mbeki indicated in their discussions that:

"They don't want us to be charged – and they don't want them to be charged"

383. Marais said in the interview that on his side at the talks were former Defence Minister General Magnus Malan, former Chiefs of the Defence Force Generals Constand Viljoen and Jannie Geldenhuys, and former Chief of the Army General Kat Liebenberg – although sometimes they brought in other generals such as former Surgeon-General Niël Knobel, or one of the former Chiefs of the Air Force, as required.

384. Marais told Schmidt that on the ANC/Government side, Mbeki's team usually consisted of the "security cluster", which initially included Minister of Defence

Joe Modise, Minister of Safety and Security Sydney Mufamadi and Minister of Justice Dullah Omar. According to Schmidt, when Mbeki became President, Zuma's "security cluster" team would most likely have included Minister of Defence Mosiuoa Lekota, Minister of Justice Penuell Maduna (replaced by Brigitte Mabandla in Mbeki's second Cabinet), Minister of Intelligence Joe Nhlanhla (replaced by Ronnie Kasrils), and

Minister of Safety and Security Steve Tshwete (replaced by Charles Nqakula).

385. On 5 May 2020, former Minister of Intelligence Kasrils emailed Schmidt regarding the ANC-SADF talks advising that he had 'no knowledge of virtually all the meetings and developments arising from such talks.' Schmidt no longer has a copy of this email.

386. Schmidt notes in his book, that during the interview, Marais showed him an unsigned handwritten letter he prepared for the signature of the former Chiefs of the SADF in early 2004. Marais permitted Schmidt to take photographs of the letter. The letter was addressed to Deputy President Zuma, and it recalled the initiation of the series of secret, high-level talks between the government and former SADF Generals, a copy of which is annexed hereto marked **FA61**.

The letter stated *inter alia*:

"A process of communicating between the ANC initially and the government lately with the former chiefs of the SA Defence Force was initiated by the Deputy President of South Africa Mr T. Mbeki when he

approached General C.L. Viljoen in 19? (sic). General Viljoen after consultation with the former Chiefs of the Defence Force within the structure of the SADF Contact Bureau conveyed our preparedness to communicate with Mr Mbeki in his capacity as Deputy President and President of the NEC of the ANC.

A convenor, Mr J. Kögl, apparently empowered by Mr Mbeki, arranged for a meeting at his house in Johannesburg. That meeting was in the form of discussions followed by a dinner hosted by Mr Kögl. It was attended by Mr Mbeki and various of his ministers as well as the Premier of Mpumalanga Mr M. Phosa, [leader of an ANC lobby arguing that its members be protected from prosecution], and by us the former Chiefs of the SADF.

There was enthusiastic agreement that the commenced communication should be continued and that more meetings should follow. We, the former Chiefs of the SADF, being aware of the Deputy President's tight work schedule, suggested that he appoint one of his ministers to represent the ANC in future deliberations. Mr Mbeki, however expressed the opinion that the process of communication, which was mutually agreed to, was so important to him that he preferred to remain the prime representative of the ANC in future deliberations.

Many deliberations followed and mutual agreements were reached. When Mr Mbeki could not attend, he authorised somebody, usually a minister, and later on when he became president in 1999, you [Deputy President Jacob Zuma] represented him.

In execution of mutual decisions, much effort was put in by the Contact Bureau and some of your ministers to prepare papers and submissions for acceptance by the Deputy President and later on the President.

In similar fashion, we the former Chiefs of the SADF as members of the forum were flown to Cape Town for discussions with Ministers Maduna and Nqakula and thereafter with you on 17 February 2003."

387. Former Premier of Mpumalanga, Mr Mathews Phosa, in a telephonic call to Schmidt on 2 June 2020, denied the claim of Marais that he had been involved in an ANC lobby pursuing protection from prosecution.
388. Bubenzer writes that Geldenhuys and Kögl advised him that by the end of 2002, the consulting parties had agreed on a detailed proposal for the enactment of a legal mechanism which amounted to a new amnesty. It envisaged an amendment to the Criminal Procedure Act to allow for a

new kind of special plea based on the TRC's amnesty criteria, followed by an inquiry by the presiding judge.

389. By late 2002 the proposal and draft legislation had been finalised by the Justice Department and was ready to be presented to Parliament for enactment. However, it first had to be approved by President Mbeki, who ultimately rejected it in early 2003. Nonetheless, as has been set out above, the essential ideas remerged in the subsequent amendments to the Prosecution Policy.

390. At the ANC's 51st national conference in December 2002 in Stellenbosch, a discussion of guidelines for a broad national amnesty, possibly in the form of presidential pardons, was scheduled. According to the head of the ANC presidency, Smuts Ngonyama, the ANC supported the idea of introducing a new amnesty law. He added that his party was generally against running trials in the style of the Nuremberg trials, since this would occur at the cost of nationbuilding. I attach hereto a copy of a news article marked **FA62**.

391. Prior to Mbeki's rejection of the amnesty legislation in early 2003, the SADF

generals appeared to be on the brink of a breakthrough. Marais advised Schmidt in the aforesaid interview that after 7 years of negotiations, the generals and the Cabinet's security cluster had agreed on a legal framework for a post-TRC amnesty process. According to Marais the

government arranged for “a law writer in Cape Town” to come up with the new legislation.

392. On 17 February 2003, a delegation of SADF generals led by Geldenhuys met with Justice Minister Penuell Maduna and Police Minister Charles Ngakula in Cape Town. The law drafter (a state official in the Department of Justice) was called in to read out the proposed legislation. Marais indicated to Schmidt:

“... and when he finished, we said ‘But that’s got nothing to do with us’... because they [said] they will grant amnesty to everyone who will make a full statement of his [crimes committed] so General Geldenhuys said ‘No, we don’t need that. All our people who wanted to make statements and ask for forgiveness already went to the TRC. Our other people ... don’t have to do that, so this means nothing to us The whole thing collapsed there This whole conversation collapsed...” (At page 146 of Death Flight).

393. According to Schmidt, the differences between the sides were now irreconcilable: the generals wanted a post TRC law granting a new blanket amnesty with no disclosure required – but the government appeared only willing to offer an amnesty based on full disclosure to be decided on a case-by-case basis.

394. The talks between the SADF Generals and the government came to a close during 2004, without resolution, as was evident from Marais’ 2004 letter to Deputy President Zuma referred to above:

“In spite of such submissions and apparent acceptances, little notable implementation was effected by the ANC or government. ...

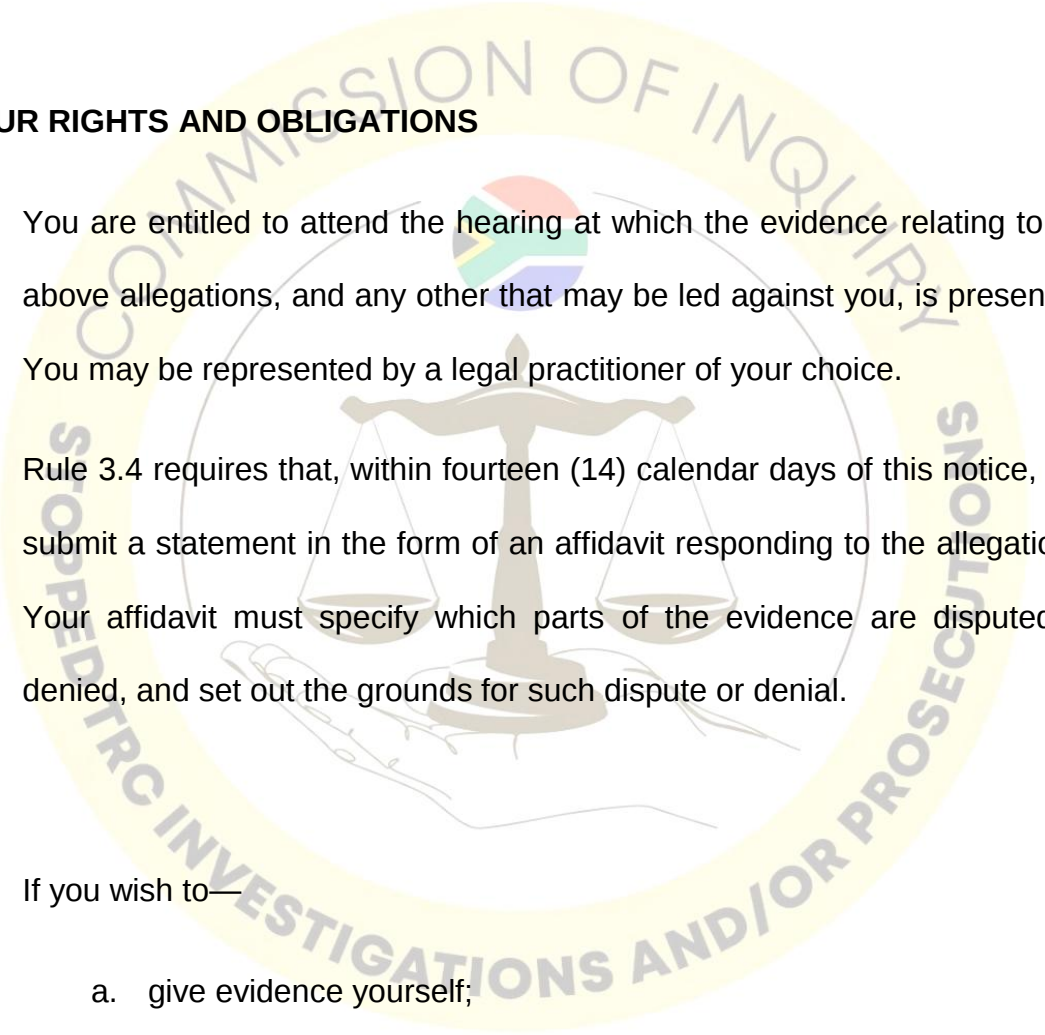
Agreement on outstanding matters was again confirmed, yet more than a year later, no sign of implementation has become apparent, neither

was there any effort on your behalf to inform us of any progress which could lead to eventual implementation.

In view of the above, you are requested to inform us of the desirability from your point of view to keep the door open for further co-operation."

395. Deputy President Zuma did not respond to the letter.

YOUR RIGHTS AND OBLIGATIONS

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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 at secretary@trc-inquiry.co.za

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.