

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

HELD AT:

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

BEFORE:

COMMISSIONERS:

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

EVIDENCE LEADERS:

Adv Ishmael Semanya (SC)
Adv Vas Soni (SC)
Adv Fana Nalane (SC)
Adv Nompumelelo Seme
Ms Baitseng Rangata
Adv Phelo Mahlati-Mbanga

REPRESENTATIVES

Adv Sello Alcock (for Khulumani Group)
Nick de Villiers (for Khulumani Group)
Adv Gwala-NPA Representative
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Adv KD Moroka (SC) – DOJ Representative
Adv Motlalepule Rantho (for SAPS)
Adv Irene Dikgale (for SAPS)
Adv Nwabisa Mtshizana (for Ex-NDPP's Officials)

28 SEPTEMBER 2026

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PROCEEDINGS ON 28 SEPTEMBER 2026

CHAIRPERSON: Good morning to you all. Mr Semenya?

ADV SEMENYA: Madam Chair, good morning to you as well as to the other Commissioners. Today we have Mr Botha coming to assist us on behalf of the Khulumani Group. He will be led by Adv Sello Alcock.

ADV ALCOCK: Yes, I confirm that I will be leading Mr Botha. Good morning, Commissioners, good morning to you.

CHAIRPERSON: Good morning, Mr Alcock.

10 ADV ALCOCK: Good morning to you, Commissioners. Yes, I confirm that I will bear the overall responsibility to lead Mr Botha.

CHAIRPERSON: Thank you. Mr Botha, are you going to give your evidence under oath or affirmation?

MR BOTHA: Under oath, Judge.

CHAIRPERSON: Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth?

MR BOTHA: I do swear.

CHAIRPERSON: If so, raise your right hand and say 'so help me God'.

20 MBUYISELO ALBERT BOTHA: duly sworn states

CHAIRPERSON: Thank you. Mr Alcock, your witness.

EXAMINATION BY ADV ALCOCK: Thank you very much. Mr Botha, good morning to you again.

MR BOTHA: Good morning, Advocate.

ADV ALCOCK: Mr Botha, before you delve into the issues, can you

please just give us a short biographical background and your role in activism in the past?

MR BOTHA: My name is Mbuyiselo Albert Botha. I was born and bred in Sharpeville in the Vaal Triangle. I was shot in ...[intervenes]

COMMISSIONER KGOMO: Are you able to move closer to the microphone? Yes, thank you.

MR BOTHA: As I said, my name is Mbuyiselo Albert Botha, born and bred in Sharpeville in the Vaal Triangle. In 1986 I was shot in the head. The bullet went through, got lodged at the back. During the
10 anti-apartheid protest in my hometown, Sharpeville, they were running boycotts and that led to what we call hemiplegia. That was in 1986 on 15 September. I was a member of the Sharpeville Civic Association, fighting against the increases then of the local government, who we considered as illegitimate and not representative of who we wanted. These were counsel that were imposed on us.

And fast forward, I then was part of a group of men who formed what we came to call the South African Men's Forum. Its purpose was to fight against GBV, femicide and then moved on to
20 join the Sonke Gender Justice network, still doing the same in terms of GBV and femicide in our country.

For the last 10 years I worked as a commissioner at the Commission for Gender Equality, appointed 2014 to 2018, subsequently, appointed second-term president Ramaphosa from 2019 to 31 May 2024. Presently I am the Deputy Chairperson of the

Khulumani Support Group. This organisation was formed by survivors and victims of violence in the country and its purpose is to make sure that the voices are never forgotten throughout the country. It exists in all the nine provinces. That is it, Advocate.

ADV ALCOCK: And how long have you been with Khulumani?

MR BOTHA: Since its inception, I have been a member, but not serving in their board. From 1997, I have always been an active member, but I only was elected in the board in 2022 to serve as the deputy chairperson. Since its inception, I have always been an active
10 member of the Khulumani Support Group.

ADV ALCOCK: Would you then agree that you have the standing to represent in this evidence on behalf of Khulumani?

MR BOTHA: I do, Advocate.

COMMISSIONER KGOMO: And Mr Botha, you also deposed to the affidavit in the Sonke justice case concerning JICS and Correctional Services that went up to the Constitutional Court. Is that correct?

MR BOTHA: I was not... at that point I was not. I had left Sonke. I was already the commissioner.

COMMISSIONER KGOMO: Oh, okay.

20 ADV ALCOCK: Thank you, Commissioner. Mr Botha, on what basis does Khulumani believe that the issue of reparation remains unresolved would you say?

MR BOTHA: Advocate, it is on the basis that a lot of our members feel that they have not been, for many, many years since its inception up to date, they have not been heard adequately and their material

condition, their psychological conditions have not been adequately addressed. So there is, Advocate, a sense from our members that... and I have also, as part of, I have also been a victim myself; there is a sense that we have not been able to be heard and that redress and... I mean the voices have been muted, and so we are feeling, Advocate that we represent the majority of what one would term as your voiceless people who were survivors or victims of apartheid.

ADV ALCOCK: And in your opinion, what is it that you are asking this Commission to deeply ponder or consider?

- 10 MR BOTHA: Well, Advocate, we are asking the Commission not to reopen or to go back to, Advocate what had been done, but we are saying that there are instances that, for example, the Sasolburg Zamdela group were of the view that here is a case, a clear case or example of how people have not been heard and feel that their concerns and what they went through have not been adequately addressed, Advocate, ja.

ADV ALCOCK: And I believe you deposed to a supplementary affidavit, in essence, to capture the plight of that particular group.

MR BOTHA: Yes, yes, Advocate.

- 20 ADV ALCOCK: And let me then lead you to that affidavit, paragraph 8, I think is in essence where you tackle from paragraph 8.

COMMISSIONER GABRIEL: Can you give us the page number, please?

ADV ALCOCK: The page would be page 2. It consists of 12 pages, the main.

COMMISSIONER GABRIEL: In the supplementary.

ADV ALCOCK: The supplementary, so it would be...

CHAIRPERSON: 2383.

ADV ALCOCK: It would be 2...

CHAIRPERSON: 2383.

COMMISSIONER GABRIEL: Do you have a paginated bundle?

ADV ALCOCK: Yes, I do, but we are working off, so the supplementary is a basis for the evidence we are leading, but I do have the full bundle.

10 CHAIRPERSON: Yes, you have the paginated bundle.

ADV ALCOCK: I do indeed.

CHAIRPERSON: Page 2383.

ADV ALCOCK: 2383.

CHAIRPERSON: And you are talking of paragraph 8, which I do not have, because my supplementary affidavit starts at page 1 and then goes to page 3.

COMMISSIONER KGOMO: Well, there are two pages missing. We do not have page 2 and I think we do not have page 8. We do not have... Ja, we do not have page 2 and we do not have page 8 of the
20 supplementary.

ADV ALCOCK: Page 2 and page 8.

COMMISSIONER KGOMO: Yes.

ADV ALCOCK: I am not sure then how to... Shall I hand up...?

CHAIRPERSON: Yes.

ADV ALCOCK: I am not sure how to resolve it. Must I then hand

up...?

CHAIRPERSON: Do you have a copy to hand up?

ADV ALCOCK: I can hand up, yes. In fact, we have, ja, the original. I have a copy I can hand up. We can work off the copy that I originally intended to work from, the fact that you have to... enough on my person to sort it. You will notice that there is an original that is commissioned.

CHAIRPERSON: Ja, just page 2 and 8.

ADV ALCOCK: Just hand up those two pages.

10 CHAIRPERSON: Just those two pages.

ADV ALCOCK: Okay, that is page 2.

CHAIRPERSON: Otherwise, we have got the supplementary affidavit.

ADV ALCOCK: Fantastic. Then I will then hand up pages 2 to 8.

COMMISSIONER GABRIEL: 2 and 8. So it is only two pages.

ADV ALCOCK: Correct.

COMMISSIONER GABRIEL: You can hand it up.

COMMISSIONER KGOMO: Can you help, please?

ADV ALCOCK: May I proceed?

20 CHAIRPERSON: Yes, you may proceed.

ADV ALCOCK: I was going to take... In fact, I am going to take Mr Botha to page 2. The heading would be paragraph B. It is headed "1987 Industrial Action and Associated Crimes". So I was going to, because he made reference to the Zamdela group. I am merely confirming for the purposes of this Commission that he had deposed

under oath to bring the plight of the Zamdela people.

ADV SEMENYA: Chair, just for completeness, if those paragraphs we do not have can be read into the record.

CHAIRPERSON: Yes.

ADV SEMENYA: We will be able to follow.

CHAIRPERSON: Yes.

ADV ALCOCK: Yes, then, Mr Botha, will you then read from paragraph 8 and capture the plight? I think you will read from paragraph 8 to 16 to contextualise the Zamdela, the plight of the
10 Zamdela group.

MR BOTHA: Thank you, Counsel.

“In October of 1987, employees of Sasol Limited and National Petroleum Refineries of South Africa, NATREF, embarked on a lawful industrial action. In the main, the industrial action was aimed at protesting for better living salaries from R80 to 300 and against the ongoing exploitation of employees; one of the employees and leaders of that industrial action, Mr Lenning Makhiwane
20 (Mr Makhiwane), whose affidavit is attached in here, Annexure SA1. Mr Makhiwane gives an account of events in relation to the events of the 1987 industrial action and the failed and/or ignored attempts of the Zamdela Sasolburg victims and their families in obtaining justice.

About 76 protesting workers were killed during the industrial action. They were killed by members of the South African Police and Inkatha Freedom Party members that were allegedly co-opted by Sasolburg and NATREF to execute violence against the employees. A further list of other protesters who were killed is attached herein and marked Annexure SA2. One of the victims who were killed during that industrial action is Mr Ndiko Marume (Ndiko). After his killing, Mr Makhiwane approached the Sasolburg police station as an attempt to open a criminal case against the police. Mr Makhiwane was met with resistance from the police against opening the case. He ultimately left the police station without opening the case. This is one many examples of the instances that began this long process of seeking justice. Post-1994, Mr Makhiwane persisted with seeking justice for those victims who were killed during the protest, including writing to the then President, Mr Nelson Mandela, in 1986 and the former Premier of the Free State, Ms Ivy Matsepe-Casaburri in addition to appearing before the 1996 TRC Commission wherein he provided his account as a witness of

events during the killing of protesting workers.

After his testimony at the 1996 TRC, Mr Makhiwane was advised by the Commission that there would be further contact and engagement with the Zamdela Sasolburg victims. This never happened. The Khulumani's role and how the Zamdela Sasolburg victims came to our attention.

The Khulumani has for many years ...[intervenes]

CHAIRPERSON: Mr Alcock, I thought you wanted him to read until
10 paragraph 16.

ADV ALCOCK: That is read into the record and I just thought then to also address my learned senior, Mr Semenya's query to read the stuff into the record. I am going to then take him to page 8, to read page 8 into the record, but I am going to suggest that he starts at paragraph 38, so that it captures the context of some of the things that we are asking the Commission to do. So it will be page 7. Can you see paragraph F?

MR BOTHA: Yes, I do, Counsel.

ADV ALCOCK: Sorry, from page 38. I think you can read that up
20 until paragraph 43, because then we will be able to meet the need to get page 8 read as part of the record.

MR BOTHA:

"The immense and continuing work that Khulumani does is done with very limited support and resources which on its own makes the case

as to the extent of the state's involvement in this justice-seeking process. Khulumani's role in bringing the Zamdela Sasolburg victims to the attention of the Commission does not mean that Khulumani represents every factual assertion made by every affected person that has already been independently verified. We labour to locate actual and genuine victims and assist in the compiling of their documentary evidence.

10 Khulumani also does not seek, does not ask the Commission to regard the Zamdela Sasolburg victims' account as finally adjudicated, merely because Khulumani has brought it before this Commission, but rather Khulumani considers that it has identified an actual group of victims whose historic timeline, as evidenced, warrants an investigation and some of substantial judicial recognition. Where a witness has direct knowledge of a particular event, that witness

20 should be given an opportunity to be heard. As where a document exists as well, such document should be examined. Where an institutional record exists, that record should be obtained and considered; and in the same breath, where a matter remains uncertain, the uncertainty should

be identified and clarified if possible. This is consistent with Khulumani's broad approach to survivor evidence. Its database of victims and records are intended to assist in the identification and verification, rather than to replace an appropriate verification process. Khulumani's current proposal expressly contemplates cross-referencing its survivor database against the 1996 TRC archives for verification. Why the

10 Zamdela group is relevant to Khulumani's case."

ADV ALCOCK: I think that is the essence. I think now we have captured then the essence of page 8 into the record, Commissioners.

CHAIRPERSON: Yes.

ADV ALCOCK: I am then going to propose to take *Ntate Botha* to paragraph 48, so that we now bring in the relevance of this Commission's terms of reference.

MR BOTHA: Thanks, Counsel.

ADV ALCOCK: From paragraph 48, it is labelled "H. The Terms of Reference" and you are going to read from paragraph 48 to
20 paragraph 51.

MR BOTHA:

"I understand that the Commission must confine its findings and recommendations to matters falling within its terms of reference. Therefore, Khulumani does not ask the Commission to

enlarge those terms of reference. Khulumani also does not ask the Commission to retry the events of 1987, and this is because the relevance of the Zamdela Sasolburg victims' material is directed to the history of what happened after affected persons sought institutional assistance and reparations after their accounts entered the 1996 TRC process. The documentary record may assist the Commission in determining what
10 happened to that matter after it was brought to the attention of the 1996 TRC. The evidence may also assist the Commission in understanding the practical consequences of unresolved 1996 TRC matters to affected persons. And in that sense, Khulumani considers the Zamdela Sasolburg victims' experience to be an illustrative case study rather than a new substantive matter for adjudication by the Commission."

ADV ALCOCK: Thank you. Thank you, Mr Botha. Is it not also
20 Khulumani's intention to assist in relation to item 1.4 on what constitutes fair constitutional damages?

MR BOTHA: It is our intention, Counsel.

ADV ALCOCK: In that regard, I think you capture that in the... You are really at the end of your deposition here. I just want you then to read relation to item 1.4 and conclusion and conclude your affidavit

accordingly, thus placing it objectively into the record; from paragraph 52. "Relation to item..." Ja. The heading is "I."

MR BOTHA:

10 "Khulumani has already submitted that the question of what is appropriate under item 1.4 cannot be considered in isolation from the position of survivors who remain without reparations. The Zamdela/Sasolburg history provides one concrete example of continuing consequences of unresolved claims for justice and redress. Khulumani therefore considers that the evidence may assist the Commission in considering the broad question of fairness under item 1.4."

ADV ALCOCK: I think you may then, you may as well conclude. Read into the record your conclusions under J.

MR BOTHA:

20 "I respectfully leave it to the Commission, to the wisdom of the Commission to determine the weight and relevance of the evidence and information we have provided."

ADV ALCOCK: And then I am going to suggest; is it not true that you also previously submitted a statement before doing a supplementary affidavit?

MR BOTHA: Yes, Counsel, I did.

ADV ALCOCK: I am going to take you to your bundle 202, page 202 of the paginated bundle. It starts from page 202 all the way to page 210.

MR BOTHA: Yes, Counsel.

ADV ALCOCK: Can you just confirm on page 210, it was a statement, correct? It was not a deposition under oath, it was just a statement.

MR BOTHA: On page 202.

ADV ALCOCK: From 202 to 210. Can you confirm that it is not a
10 deposition under oath, it is a statement?

MR BOTHA: Yes, Counsel.

ADV ALCOCK: Can you confirm the date on page 210, date of that particular? At the end it has got a date. I just want you to read into the record the date of...

MR BOTHA: That is on page...

ADV ALCOCK: That particular statement; 210. The last page is
210.

MR BOTHA: That is 30 June 2026.

ADV ALCOCK: Excellent. Mr Botha, is there anything else that you
20 would like to add from what you have just deposed to, that you have just [indistinct] rather?

MR BOTHA: No, Counsel. That will be all.

ADV ALCOCK: Commissioners, it will be clear that the statement on page 202 essentially makes conclusion of law.

CHAIRPERSON: Yes.

ADV ALCOCK: Conclusions of law. So I am going to request that that statement be treated as part of legal submissions to this particular Commission as opposed to... you know because you can see that it is written in a style that mostly legal conclusions are drawn. But the factual basis is there, Commissioners, because we now have a deposition which gives us the factual basis for this Commission to then draw inferences as part of your recommendation.

CHAIRPERSON: Yes. Mr Alcock?

ADV ALCOCK: Madam?

10 CHAIRPERSON: In the statement that you have just referred Mr Botha to, there is a reference to the fact that there is a high court application for a declaratory relief that they intend to launch. Can you just lead evidence in respect of that?

ADV ALCOCK: Okay.

COMMISSIONER GABRIEL: To help you, it is at paragraph 21 of the first.

ADV ALCOCK: 21, okay. Okay. I will lead then the witness on it. Ntate Botha, please go to page 206 of your statement. Can you confirm to this Commission that it is indeed true that there is a
20 parallel court process? And I am going to say to you that I know that you are not involved. Are you aware that there is another court action that is scheduled for the high court?

MR BOTHA: Yes, I am aware, Counsel.

ADV ALCOCK: And ...[intervenes]

CHAIRPERSON: Is there one or ...[intervenes]

ADV ALCOCK: There is one anticipated.

CHAIRPERSON: There is one. Is it anticipated or has it been launched?

ADV ALCOCK: I know that the papers are drawn and I know that the silk needs to settle the papers, so I was part of that particular drafting team. So it has not yet been issued, the papers, but, ja. There is... I can confirm to this Commission that I am involved in that particular process as well.

CHAIRPERSON: Yes. So it has not been launched?

10 ADV ALCOCK: It has not yet. We have not even issued.

CHAIRPERSON: But the papers are ready to be filed?

ADV ALCOCK: The papers are ready. They are awaiting settlement by senior counsel. So, as we speak, the senior counsel is seized with settling the papers.

CHAIRPERSON: Yes. You may proceed to take us to the relevant papers.

ADV ALCOCK: They are not attached to this particular application.

CHAIRPERSON: Okay.

MR BOTHA: They are not attached.

20 CHAIRPERSON: Thank you.

ADV ALCOCK: We just make reference to them.

CHAIRPERSON: Yes.

ADV ALCOCK: They are not attached. And I suppose I can say to this Commission this is why my attitude was to treat this particular statement mostly as like legal submissions and have not laid a factual

basis. I think, ja, that is as far as I think I can take it.

COMMISSIONER GABRIEL: So, in that high court application where you are preparing papers, I see from paragraph 21.1 that you want an order from the high court that the closed list is in breach of the wide terms of section 4(f)(i) of the TRC Act, which envisages declaration to all victims.

ADV ALCOCK: It is preliminary relief. We have not... I mean, we have got a notice of motion, but it is certainly the intention to go that particular route for now.

10 COMMISSIONER GABRIEL: And you want an order declaring that the TRC and government exceeded their powers by confining the final list of victims to the three categories referred to above for purposes of all future reparations.

ADV ALCOCK: That is correct. That is correct. And I think the Zamdela case clearly illustrates that there were others, like Mr Makhiwane, for example, and a group of them, that did not even get an opportunity to sit in front of... Some may have submitted statements. So we have a category of victims and we have got the closed list. We have got others who took interim, who took the
20 interim relief with the promise that they would get final reparations. And we took a conscious decision to not include the ones that in front of this Commission, necessarily that took the interim reparations in anticipation that they will get further reparations. So, that is in essence the approach.

ADV ALCOCK: Explain that to me, Adv Alcock. So the victims who

got initial reparations are not a part of the Khulumani Support Group?

ADV ALCOCK: For the moment they are excluded.

COMMISSIONER GABRIEL: Okay. And Mr Botha, just remind me, please. It may have been in your initial statement to the pack. How many members does Khulumani Support Group have and how many victims does it have on its database?

MR BOTHA: Commissioner, we have well over 122 000 members on our database.

COMMISSIONER GABRIEL: Who are also victims?

10 MR BOTHA: Who are also victims and survivors.

CHAIRPERSON: Yes. And Mr Alcock, in your intended application, you intend to reopen the list that has been provided by the TRC for reparations.

ADV ALCOCK: I think the proper way, I need to articulate this, would be that that would flow from seeking declaratory relief. So once declaratory relief is granted, saying those provisions are unconstitutional, then I think a further subset of that remedy could be considered, because...

CHAIRPERSON: Yes.

20 ADV ALCOCK: Yes.

CHAIRPERSON: Yes. So you have not yet, you have not concluded your relief, as it were, because it still has to be settled by counsel.

ADV ALCOCK: Correct, correct. And it may very well be that senior counsel has a different take on it. So, I mean, he should defer to him.

CHAIRPERSON: So it will be pointless of you to rely on the papers as they ...[intervenes]

ADV ALCOCK: At the moment, yes.

CHAIRPERSON: Until they have been settled by counsel.

ADV ALCOCK: Until they are settled by senior counsel.

CHAIRPERSON: Thank you.

COMMISSIONER KGOMO: Mr Alcock, I want to address myself to you. You see, because the intention is to persuade us to take cognisance of certain matters and perhaps also to say something
10 about it. The Chair and Commissioner Gabriel have covered basically everything, but I think for the record, you could read into the record paragraph 21 and its subparagraph and name the paragraph, paragraph 21 ...[intervenes]

ADV ALCOCK: Of the statement.

COMMISSIONER KGOMO: Yes, at page 206.

ADV ALCOCK: 206?

COMMISSIONER KGOMO: Yes, if you can.

ADV ALCOCK: Commissioners, I have just been informed that *Ntate* Botha is in need of a comfort break.

20 CHAIRPERSON: Yes.

ADV ALCOCK: I am wondering if we could perhaps.

CHAIRPERSON: I think, how long does he require?

ADV ALCOCK: Five minutes.

CHAIRPERSON: Five minutes.

ADV ALCOCK: He indicates to me five minutes.

CHAIRPERSON: We will adjourn for five minutes.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you, Mr Alcock.

ADV ALCOCK: Thank you. I then will take the address from you, Judge Kgomo, because we are about to ...[intervenes]

COMMISSIONER KGOMO: Yes, just to read it as it is.

ADV ALCOCK: Can you just give me the reference again?

COMMISSIONER KGOMO: Paragraph 21 at page 206.

10 ADV ALCOCK: 206, paragraph 21.

COMMISSIONER KGOMO: Yes.

ADV ALCOCK: And the subparagraphs, correct?

COMMISSIONER KGOMO: Yes, and the subparagraphs and end there.

ADV ALCOCK: Okay, correct.

20 “Khulumani is preparing high court papers for declaratory relief on the following grounds. The closed list is in breach of the wide terms of section 4(f)(i) of the TRC Act, which envisages reparations to all victims. It infringes the rights of victims to human dignity under section 10 of the Constitution. Reparations were intended by the TRC to restore the human and civil dignity of victims of gross human rights violations committed in furtherance of apartheid. The

closed list and confined list policies, by denying victims that restoration, infringes their dignity. It discriminates unfairly between those victims who are identified for reparations and those secondary victims who have been ignored in a manner that unfairly infringes their dignity and is thus in breach of section 9, section 9(3) of the Constitution. The TRC and government exceeded their powers by confining the final list of victims to the three categories referred to above for purposes of all future reparations.”

COMMISSIONER KGOMO: Yes, thank you.

ADV ALCOCK: May I proceed?

CHAIRPERSON: Yes, Mr Alcock, you may proceed.

ADV ALCOCK: Mr Botha, please go to paragraph, sorry, to page 207, paragraph 25. Please read that into the record.

MR BOTHA:

“These monies are at risk in that the Calata application seeks constitutional damages for memorialisation. If the order sought is granted, such monies will be derived from the President Fund.”

COMMISSIONER GABRIEL: I think you better read paragraph 24 as well to give it context.

ADV ALCOCK: Okay, I think that sounds... Can we start from 24,

Mr Botha?

MR BOTHA:

“The monies for any reparation granted pursuant to Khulumani’s application will be derived from the monies held in the President Fund. The latest audited total assets of the funds are at 206 112 billion.”

ADV ALCOCK: Now, just for the purposes of this Commission and for the purposes of transparency, is it not correct that during the
10 break we had a discussion that the counsel for Calata says it is a misrepresentation that those monies are going to be sought from the President Fund?

MR BOTHA: Yes, Counsel.

ADV ALCOCK: Can you confirm that?

MR BOTHA: Yes, Counsel.

ADV ALCOCK: And can you confirm that in reading this into the record, we recognise the fact that there may have been some sort of slight misrepresentation of the Calata application?

MR BOTHA: Yes, Counsel.

20 COMMISSIONER GABRIEL: Mr Botha, in the supplementary statement at paragraph 21, page 2385, you say the crimes against Zamdela Khulumani victims warrant an investigation and consideration, because there is evidence that the affected persons had repeatedly attempted to bring their circumstances to the attention of public institutions. Now, just for clarity in my own mind; do you

want this Commission to reopen those investigations?

MR BOTHA: Counsel, we are of the view that we leave it to the wisdom of the Commission to determine that, but our view is that these are part of the unresolved issues that we think that they seek relief or they need to be resolved, Commissioner.

COMMISSIONER GABRIEL: Thank you. Thank you very much.

MR BOTHA: Thanks, Commissioner.

CHAIRPERSON: Yes, Mr Alcock?

ADV ALCOCK: I think ...[intervenes]

10 CHAIRPERSON: Does that conclude your evidence?

ADV ALCOCK: That really concludes our evidence on this, ja.

CHAIRPERSON: Thank you. Mr Gwala?

ADV GWALA: There are no questions, Chairperson.

CHAIRPERSON: Yes.

ADV GWALA: Thank you.

CHAIRPERSON: Madam, I forget your name.

COMMISSIONER KGOMO: Switch on your microphones, both of them, please.

CHAIRPERSON: And give me your name again.

20 ADV DIKGALE: Thank you, Chair. It is Ms Dikgale.

CHAIRPERSON: Kgale, yes.

ADV DIKGALE: Dikgale.

CHAIRPERSON: Dikgale.

ADV DIKGALE: Yes, and Ms Rantho on behalf of SAPS is available online.

CHAIRPERSON: Okay, thank you. Ms Rantho?

ADV RANTHO: Good morning, Commissioners. There is nothing from our side.

CHAIRPERSON: Thank you, Ms Rantho; anyone online?

ADV MOROKA: Moroka online.

CHAIRPERSON: Yes, Ms Moroka?

ADV MOROKA: There is no questions for clarification, Chair and good morning.

CHAIRPERSON: Good morning; anyone online?

10 ADV MTSHIZANA: Thank you, Chair, Ms Mtshizana. We have no clarificatory questions for the witness, thank you.

CHAIRPERSON: Thank you, Ms Mtshizana; anyone else, Mr Varney?

ADV VARNEY: Chair, just a few questions by of clarification.

CHAIRPERSON: Yes.

ADV VARNEY: Mr Botha, firstly, on behalf of the families, we would like to commend you and Khulumani Support Group for the very long struggle that you have waged for truth, justice and reparations. So we thank you for that hard work. As your counsel has indicated, the
20 families of the Calata Group, as they are known in this Commission, they did launch an application for constitutional damages, which is presently before the high court.

So I just want to confirm that that case is against the government. The President's Fund is not a respondent in that matter. We seek no relief against that fund. And in the application, we do

make reference to the closed list. We describe it as cruel and unjustifiable, but we say that reparations is a separate matter and not part of that application. Do you understand?

MR BOTHA: Yes, I do, Counsel.

ADV VARNEY: Thank you. Just turning to the terms of reference of this Commission, your counsel has referred you to paragraph 1.4 of the terms of reference, and it reads:

10 “Whether in terms of the law and fairness, the
 payment of any amount in constitutional damages
 to any person is appropriate.”

And I see in your statement and your evidence, you can see that there is a difference between reparations and constitutional damages. The families I represent, they believe that constitutional damages, which I should explain, is a form of relief in South African law to vindicate the rights of individuals where those rights have been egregiously violated over an extended period.

20 And essentially what they say is that because hundreds of cases from the TRC were not taken forward, and they allege that this was because of interference in the work of organisations, such as the NPA and the SAPS, most of those cases cannot be resuscitated. And so, those families have to accept that, because people have passed on, witnesses and the like, accused people. They simply cannot take those cases forward, at least most of them. And it is for that reason that they seek constitutional damages.

So perhaps I can ask you, in your view, and the view of the

Khulumani Support Group; do you think that this Commission should be making a recommendation in terms of paragraph 1.4? And if so, what do you think that recommendation should be?

MR BOTHA: I think our view is that there should be a recommendation that talks to how, I mean, those that have not found justice, how does the Commission seek to go about it to ensure that, I mean, the case in point at Zamdela that there is some redress that those survivors or the victims do find.

ADV VARNEY: Chairperson, no further questions.

10 CHAIRPERSON: Thank you, Mr Varney.

COMMISSIONER KGOMO: Mr Alcock, on the question of reparations, I do not know whether you listened or read the evidence given by the... I forget her position now, but Ms Pillay of the Department of Justice and Minister of Justice Kubayi, as well as the Secretary General of the ANC who testified here on reparations. Are you aware of that evidence?

ADV ALCOCK: Yes, I have certainly been following some of the evidence through the media, and I think I specifically, the ones that you mentioned, I did have an opportunity to listen to. So I did see
20 that particular evidence.

COMMISSIONER KGOMO: I do not think, I do not know whether you took Mr Botha through that evidence. Maybe you did, maybe not.

ADV ALCOCK: Not really. We would occasionally just informally, we have a WhatsApp group. We just share whatever was going on. So we generally try to keep an eye on the Commission sort of to

speak, but it is just sending each other new stories and just sort of talking about it, not formally per se. So I did not. But I do believe that the position itself on reparations is captured in the bigger bundle. The approach, the evidence of... I mean, we even have the evidence of; I think it is Pierre le Roux.

So I think the position is made clear around our view around reparations, and we think that it should... I think you will notice that the bulk of our submissions also focus on the, let me call it bureaucratic or administrative quagmire that then we feel we are of
10 the view that one of the things... actually, let me put it this way. One of the things that we would like this Commission to be firm on as part of your recommendations is that that stuff, the administrative burdens, all the, you know, the hurdles that the people have to go through and the inherent unfairness.

I think that this Commission should strongly make a recommendation around this. The systemic issues, really, administrative stuff that leads to this unfairness, which is what we allege. That is why we go for section 9. You know, we go for, you know, this unfairness and this discrimination. And as you are all
20 aware, the foundation of our constitution is built on dignity really of a human.

COMMISSIONER KGOMO: Yes. Mr Botha, can I just ask you; the people who are seated here, are they members of the Khulumani Group? They came in a while ago. Are they members of the Khulumani Group?

MR BOTHA: Yes, Judge Kgomo. In fact, there are some [indistinct] of the group that we were referring to this morning.

COMMISSIONER KGOMO: Yes. Not that I am giving advice, but it may be as well. I do not know what your brief is, your attorney. You can communicate this to them, at least also to go through the evidence of the witnesses who dealt with reparations, so that they are aware what those witnesses are saying. It is not a decision. It is not their decision. The decision will be made by the Commission.

10 ADV ALCOCK: In fact, Judge Kgomo, in fact, there is in the supplementary affidavit, there is a paragraph where we refer to the fact that we consulted with the Zamdela Group and we took them. So we have got recordings of their individual stories. In fact, I was at Zamdela and we sat with that particular group and we captured it. It is just that it needs transcription, but we do have an audio of... yes.

COMMISSIONER KGOMO: I am glad to hear that. Thank you, Chair.

COMMISSIONER GABRIEL: Mr Botha, so if I understand the two affidavits and Mr Makhiwane's affidavit, the essence of your concern is that these violations were taken to the TRC who did nothing about
20 it. Am I correct?

MR BOTHA: Yes, Commissioner.

COMMISSIONER GABRIEL: And then certainly Mr Makhiwane, you say in paragraph 14 of your supplementary affidavit, Mr Makhiwane was met with resistance from the police against opening the case and he ultimately left the police station without opening a case.

MR BOTHA: Yes, in fact, to a point where there was an element where he had just been dismissed, that there is no case to open here, there is no matter. Something like you do not know why you are here. You should not be here, because there is no case here.

COMMISSIONER GABRIEL: So the police refused to investigate.

MR BOTHA: Yes, because according to the police, Ndiko who died did not die as a result of the police action, it is something else. So there was that, the attitude was that of dismissal, ja.

COMMISSIONER GABRIEL: Okay. And that applies to your
10 database of victims and family members and specifically to the Zamdela Group, the Sasolburg Group.

MR BOTHA: Yes, Commissioner.

COMMISSIONER GABRIEL: Okay, thank you.

MR BOTHA: Yes, Commissioner.

ADV ALCOCK: In fact, I should just mention; I think, I do not think there are difficulties with the way the evidence was led, because we did submit Mr Makhiwane's actual affidavit.

COMMISSIONER GABRIEL: Yes. No, no, that is where I get it from.

20 ADV ALCOCK: Yes, I just wanted to say I think Mr Makhiwane himself, Mr Lenning Makhiwane is one of the people sitting in the public gallery.

CHAIRPERSON: Yes.

COMMISSIONER GABRIEL: Okay, thank you.

CHAIRPERSON: Thank you. Thank you, Mr Alcock.

ADV ALCOCK: Mr Semenya?

COMMISSIONER KGOMO: Switch off your microphone, sir.

ADV SEMENYA: Chairperson, thank you. As evidence leaders, we also want to express our great felt appreciation for the very long effort that the Khulumani Support Group has exchanged and interchanged with the evidence leaders, and I want to convey to you that we hold at heart their plight at some form of legal remedy in relation to their suffering. But in all fairness, I need to say to you, Mr Botha, that the Commission is constrained to operate only within the tramlines of its

10 terms of reference. You accept that, do not you?

MR BOTHA: I do, Commissioner.

ADV SEMENYA: And its terms of reference broadly read contemplate constitutional damages as distinct from reparations. You accept that?

MR BOTHA: I do accept that.

ADV SEMENYA: As I read the Khulumani Support Group, they still mean to approach the high court to fight the constitutionality of the closed list.

MR BOTHA: Yes.

20 ADV SEMENYA: And that is an event yet to happen, am I right?

MR BOTHA: Yes.

ADV SEMENYA: We have no further questions, Chair.

CHAIRPERSON: Thank you. Mr Botha, I may just hasten to add that I heard from Mr Alcock that the papers with regard to the high court are almost ready and I would urge you to hurry up in settling

those papers with a view of launching that application before the high court.

MR BOTHA: Will do, Judge. Thank you.

CHAIRPERSON: Yes. Mr Alcock, any re-examination to be conducted on Mr Botha?

ADV ALCOCK: [Indistinct].

CHAIRPERSON: Yes. Thank you. Thank you. Mr Botha, we thank you for having come before this Commission to give evidence on behalf of Khulumani Support Group. We appreciate the long road
10 that you have travelled in order to come here; and as you are aware, we are constrained our terms of reference, but we make no decision with regard to the evidence that you have tendered before us. We appreciate it. You are now excused as a witness.

MR BOTHA: Thank you, Commissioner. Thank you, Judge.

NO FURTHER QUESTIONS

CHAIRPERSON: Thank you, Mr Alcock. Yes. These proceedings are adjourned until 1 October at 10 o'clock.

INQUIRY ADJOURNS UNTIL 1 OCTOBER 2026

CERTIFICATE OF VERACITY

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FORUM OF ORIGIN	:	Inquiry
CASE NUMBER	:	N/A
TRANSCRIBER	:	M Brits
DATE COMPLETED	:	2026-09-28
NUMBER OF PAGES	:	33 (Including front page)

TRANSCRIBER :



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