

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT 295/20

In the matter between:

**SECRETARY OF THE JUDICIAL COMMISSION OF INQUIRY
INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION
AND FRAUD IN THE PUBLIC SECTOR,
INCLUDING ORGANS OF STATE**

Applicant

and

JACOB GEDLEYIHLEKISA ZUMA

Respondent

and

**COUNCIL FOR THE ADVANCEMENT
OF THE SOUTH AFRICAN CONSTITUTION**

First *Amicus Curiae*

ADVOCATE VUYANI NGALWANA SC

Second *Amicus Curiae*

THE HELEN SUZMAN FOUNDATION

Third *Amicus Curiae*

**FILING SHEET – HEADS OF ARGUMENT OF THE COUNCIL FOR THE
ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION AS *AMICUS
CURIAE***

PRESENTED HEREWITH FOR SERVICE AND FILING: Heads of Argument of the Council for the Advancement of the South African Constitution ("**CASAC**") as *Amicus Curiae*.

DATED at **SANDTON** on this the **24th** day of **DECEMBER 2020**.



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Amicus Curiae

HEADS OF ARGUMENT

**COUNCIL FOR THE ADVANCEMENT OF THE SOUTH AFRICAN CONSTITUTION
*AS AMICUS CURIAE***

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INTRODUCTION

1. On 16 November 2020, during an appearance that gave rise to these proceedings, counsel for former President Jacob Zuma (“**Mr Zuma**”) indicated to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State (“**Commission**”) that Mr Zuma would “*exercise his right to say nothing*” and that his counsel would “*bring him here and tell him to sit there and say nothing*” if he were compelled to testify at the Commission.¹
2. The Council for the Advancement of the South African Constitution (“**CASAC**”) seeks to participate in these proceedings to make one simple submission: our law does not permit Mr Zuma to “*sit there and say nothing*” because no witness before a commission of inquiry has a “*right to say nothing*” at a commission of inquiry.
3. No witness before a commission of inquiry has a “*right to say nothing*” because every witness before a commission of inquiry has an obligation to “*to answer fully and satisfactorily any question lawfully put to him*” and may only refuse to answer a question if it is subject to a privilege other than the privilege against self-incrimination (such as legal professional privilege).²
4. Only an arrested person or an accused person during a criminal trial has a “*right to say nothing*”.

¹ Applicant’s Founding Affidavit p 043 paras 63.3.1 and 63.3.2 referring to Annexure IM5B p 63 lines 11-20 and p 85 line 24 to p 86 line 2

² Sections 3(4) and 6(1) of the Commissions Act, No 8 of 1947 (“**Commissions Act**”)

5. The constitutional rights of an arrested or accused person are protected because any testimony they may have given before a commission of inquiry is inadmissible in their criminal trial. The only exception is if they are on trial for failing to (i) appear, (ii) remain in attendance when required to do so, (iii) be sworn or make affirmation, (iv) answer fully and satisfactorily, or (v) produce a book, document or object at the commission of inquiry.³
6. As a result, Mr Zuma, or any other witness summoned to appear before the Commission, must fully and satisfactorily answer every question put to them, and may not rely on either the privilege against self-incrimination or the right to silence to refuse to do so.

CASAC'S INTEREST AND ROLE AS AN *AMICUS CURIAE*

7. CASAC applied for admission to these proceedings and no opposition to that application was received.⁴ The interest and basis on which CASAC qualifies for admission in these proceedings as an *amicus curiae* is set out in its application for that admission to which the Court is respectfully referred, and those submissions are not repeated here.
8. CASAC was directed to submit its written submissions by not later than 28 December 2020; these are those submissions.⁵

³ Section 6(1) of the Commissions Act

⁴ See application for admission as *amicus curiae* dated 18 December 2020

⁵ Prayer 3 in the Notice of Motion

9. CASAC addresses the following topics in these heads of argument:

9.1. The nature and purpose of a judicial commission of inquiry;

9.2. The reasons why there is no privilege against self-incrimination or right to silence in a commission of inquiry; and

9.3. The appropriate formulation of prayer 4 in the Notice of Motion as a result.

NATURE AND PURPOSE OF A JUDICIAL COMMISSION OF INQUIRY

10. A judicial commission of inquiry is a vehicle for detailed, comprehensive and focussed fact-finding in a manner that uncovers the truth, and promotes public accountability. It also enhances the rule of law, transparency and openness. Commissions of inquiry fulfil a variety of functions, but are typically appointed in order to investigate the facts of a particular set of events and to tender a report thereafter proposing avenues for resolution.

11. This Court has addressed the role of a commission of inquiry in several decisions:

11.1. In *Magidiwana and Others v President of the Republic of South Africa and Others*⁶, this Court identified the role of a commission of inquiry to be primarily truth-telling, stating:

“It is open to the President to search for the truth through a commission. The truth so established could inform corrective measures, if any are recommended, influence future policy, executive action or even the

⁶ [2013] ZACC 27; 2013 (11) BCLR 1251 (CC) at para 15.

initiation of legislation. A commission's search for truth also serves indispensable accountability and transparency purposes. Not only do the victims of the events investigated and those closely affected need to know the truth: the country at large does, too."⁷

11.2. The role of commissions as vehicles for accountability was also explained in *Minister of Police and Others v Premier of the Western Cape and Others*, where this Court further stated that "a commission of inquiry [is] one of the mechanisms of accountability and oversight available. . ."⁸ This Court also explained that, in addition to advising the President, a commission of inquiry serves a deeper public purpose, particularly at times of widespread disquiet and discontent and relied on the words of Cory J of the Canadian Supreme Court in *Phillips v Nova Scotia*:

*"One of the primary functions of public inquiries is fact-finding. They are often convened, in the wake of public shock, horror, disillusionment, or scepticism, in order to uncover 'the truth'. . . In times of public questioning, stress and concern they provide the means for Canadians to be apprised of the conditions pertaining to a worrisome community problem and to be a part of the recommendations that are aimed at resolving the problem. Both the status and high public respect for the commissioner and the open and public nature of the hearing help to restore public confidence not only in the institution or situation investigated but also in the process of government as a whole. They are an excellent means of informing and educating concerned members of the public."*⁹

⁷ *Magidiwana* at para 15.

⁸ [2013] ZACC 33; 2013 (12) BCLR 1365 (CC) 2014 (1) SA (1) at para 41.

⁹ *Minister of Police* at para 45.

11.3. In *Azanian Peoples Organization (AZAPO) and Others v President of the Republic of South Africa and Others*, this Court described the role of commissions of inquiry as also encompassing a national catharsis and accountability element. The role of a commission included having regard to “*the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations*”.¹⁰

11.4. In *SARFU I*, this Court summarised the role of commissions as being “*to determine facts and to advise the President through the making of recommendations. It is a mechanism whereby he or she can obtain information and advice.*”¹¹

12. Commissions of inquiry are the vehicle best suited to at least the following functions:

12.1. Establishing the facts — Commissions provide a full and fair account of what happened, especially in circumstances where the facts are disputed, or the course and causation of events is not clear;

12.2. Learning from events — Commissions are beneficial in that they help to prevent the recurrence of tragic or undesired events by synthesising or distilling lessons which can be used to change practice;

12.3. Catharsis or therapeutic exposure — Commissions provide an opportunity for reconciliation and resolution, by bringing protagonists face to face with each other’s perspectives and problems;

¹⁰ [1996] ZACC 16; 1996 (8) BCLR 1015; 1996 (4) SA 672.

¹¹ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 1999 (10) BCLR 1059 (CC) (“**SARFU I**”) at paras 146 – 147.

12.4. Reassurance — Commissions assist in rebuilding public confidence after a major failure by showing that the government is making sure it is fully investigated and dealt with; and

12.5. Accountability, blame, and retribution — Commissions work to hold people and organisations to account, and sometimes indirectly contributing to the assignation of blame and to mechanisms for retribution and sanction.¹²

13. A commission of inquiry is also different to an adversarial court process in several beneficial respects in these circumstances:

13.1. Commissions have more flexibility than court process, This makes them more timeous, inclusive and effective than typical courts;

13.2. Commissions actively investigate and regulate themselves and do not depend on a particular party to bring a case;

13.3. The only restriction on a commission are its terms of reference whereas the work of courts is restricted to disputes between the parties;

13.4. A commission, and not the parties, determines what type of evidence should be called;

13.5. Unlike a court, a commission often determines a matter of great national importance and not a narrow dispute between parties like a court; and

¹² *House of Commons Public Administration Select Committee Government by Inquiry: Volume 1* (The Stationery Office Limited, London, 2005), 9–10.

13.6. A commission's findings are more certain since they are usually not appealable and may be reviewed only on very narrow grounds.¹³

14. In light of these important functions and sensitive to the different process demanded of an inquisitorial commission of inquiry, CASAC submits that the clarity of a decision by this Court in these proceedings that there is no privilege against self-incrimination or right to silence in commissions of inquiry would vindicate these important objectives and enhance the functioning of any commission of inquiry.

THERE IS NO PRIVILEGE AGAINST SELF-INCRIMINATION OR RIGHT TO SILENCE IN A JUDICIAL COMMISSION OF INQUIRY

15. The constitutional rights of an arrested or accused individual to remain silent or to rely on the privilege against self-incrimination are protected within a commission of inquiry because the legislative and regulatory framework that governs the work of the Commission ensures that testimony before it is inadmissible at a criminal trial unless the offence being prosecuted is one in terms of the provisions of the Commissions Act.

The Constitution

16. The starting point for this submission is the relevant provisions contained in section 35 of the Constitution, which provides that:

¹³ New Zealand Law Commission, *The Role of Public Inquiries*, page 11, para 22 & 23 (Issue 1: 2007). NZ Law Commission.

“35. Arrested, detained and accused persons

1. Everyone who is arrested for allegedly committing an offence has the right

a. to remain silent;

b. to be informed promptly

i. of the right to remain silent; and

ii. of the consequences of not remaining silent;

c. not to be compelled to make any confession or admission that could be used in evidence against that person;

...

3. Every accused person has a right to a fair trial, which includes the right

...

h. to be presumed innocent, to remain silent, and not to testify during the proceedings;

i. to adduce and challenge evidence;

j. not to be compelled to give self-incriminating evidence;

...”

17. It is clear from section 35 that the constitutional privilege against self-incrimination or the right to remain silent is not extended to a witness before a commission of inquiry. Only an arrested or accused person is afforded the protections created by section 35 of the Constitution. This is the end of the matter here. The Constitution is clear that a person appearing as a witness in a commission of inquiry does not have the same privilege or rights of an arrested or accused person. However, we next proceed to consider the specific and relevant provisions that regulate evidence before a commission of inquiry to test this submission.

The Commissions Act

18. The Commissions Act applies to the work of the Commission as specified in paragraph 4 of the Commission's Terms of Reference¹⁴, subject to such amendments and exemptions as may be specified in further proclamations.

19. Section 3(1) of the Commissions Act provides that

“For the purpose of ascertaining any matter relating to the subject of its investigations, a commission shall . . . have the powers which a [High Court] has . . . to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.”

(emphasis added)

20. This section means that appearance before the Commission to testify is mandatory once a summons has been issued to an individual. It also confirms that the purpose of this compulsion power is “*ascertaining any matter relating to the subject of its investigations*”. Appearance alone is insufficient, a witness is required to be examined to further the fact-finding and truth-telling objectives of a commission of inquiry.

21. Section 3(4) of the Commissions Act states that:

“Any person who has been summoned to attend any sitting of a commission as a witness or who has given evidence before a commission shall be entitled to the same witness fees from public funds, as if he had been summoned to attend or had given evidence at a criminal trial in a superior court held at the place of

¹⁴ Proclamation No 3 of 2018, Annexure IM1 p 081

such sitting, and in connection with the giving of any evidence or the production of any book or document before a commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in such a court, shall apply."

(emphasis added)

22. This provision is clear that a witness before a commission of inquiry is to enjoy the privileges available to a witness in a criminal trial. But what are the privileges “*applicable to a witness giving evidence*” in a criminal trial? And does this place a witness before a commission of inquiry in the identical position to that of an accused person facing prosecution in a criminal trial in a High Court?

23. We submit that it does not for two main reasons:

23.1. First, section 3(4) of the Commissions Act must be interpreted today in light of the provisions of section 35 of the Constitution. It therefore must exclude the privilege against self-incrimination and right to remain silent afforded only to an arrested or accused person in our constitutional era. The “*law relating to privilege*” that section 3(4) seek to apply must be the constitutional approach of limiting the section 35 rights to an arrested or accused person.

23.2. A witness would continue to enjoy the other protections of the “*law relating to privilege*” pursuant to section 3(4). These include other privileges such as legal professional privilege (including both legal advice privilege and litigation privilege).¹⁵

¹⁵ See also sections 195 to 204 of the Criminal Procedure Act, No 51 of 1977

23.3. This is the only interpretation that is consistent with both section 3(4) of the Commissions Act and section 35 of the Constitution.

23.4. Second, the legislature's choice of words deliberately equates a witness before a commission of inquiry with a witness in a criminal trial. Had the legislature wished to equate a witness before a commission of inquiry with the accused in a criminal trial it would have used clear language to make that plain. Instead, it chose the language applicable to a witness summonsed to attend and testify at a criminal trial as a witness, not the accused.

24. The correctness of this interpretation of section 3(4) is confirmed by consideration of the other legislative and regulatory provisions applicable to testimony before a commission of inquiry.

25. Section 6(1) of the Commissions Act provides that:

“Any person summoned to attend and give evidence or to produce any book, document or object before a commission who, without sufficient cause (the onus of proof whereof shall rest upon him) fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the enquiry or until he is excused by the chairman of the commission from further attendance, or having attended, refuses to be sworn or to make affirmation as a witness after he has been required by the chairman of the commission to do so or, having been sworn or having made affirmation, fails to answer fully and satisfactorily any question lawfully put to him, or fails to produce any book, document or object in his possession or custody or under his control, which he has been summoned to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.”

(emphasis added)

26. Section 6(1) creates a criminal offence for failure to (i) appear, (ii) remain in attendance when required to do so, (iii) be sworn or make affirmation, (iv) answer fully and satisfactorily, or (v) produce a book, document or object at a commission of inquiry.
27. Sections 3(4) and 6(1) are clear that a witness is compelled to appear before a commission of inquiry and to answer fully and satisfactorily any question put to him (or her) to the exclusion of the privilege against self-incrimination or the right to remain silent.
28. These sections also are clear that a witness' testimony is subject only to the other available privileges in our law of evidence, such as legal professional privilege. This means that a witness may refuse to answer a question before a commission of inquiry only by relying on a privilege other than the privilege against self-incrimination. A question seeking self-incriminating information is permitted; one seeking other privileged information is not. This is what determines whether the question is "*lawfully put to him*" for purposes of section 6(1) of the Commissions Act.
29. This distinction between the privilege against self-incrimination and right to remain silent, and all other privileges is the bright-line that must be drawn in this case by adopting this interpretation of sections 3(4) and 6(1) of the pre-Constitution Commissions Act. Guidance from this Court endorsing this application of our law ensures that both the Commission and any witness has clarity about their obligations to appear, fully and satisfactorily answer questions, and the limitations on the grounds on which a witness may refuse to answer a question to one of the other privileges.

30. This approach is also consistent with the Regulations and Rules adopted by the Commission itself.

The Commission's Regulations

31. Regulation 8 of the Regulations of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("**Commission Regulations**")¹⁶ states that:

"(1) No person appearing before the Commission may refuse to answer any question on any grounds other than those contemplated in section 3(4) of the Commissions Act, 1947 (Act No. 8 of 1947).

(2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947)."

32. Regulation 8(1) confirms that the Commission has compulsion powers to ensure that testimony is given by a witness, even if it is self-incriminating. It anticipates

¹⁶ The Regulations were promulgated in Government Notice No. 105, Government Gazette No. 41436 (9 February 2018), and are amended by Proclamation No. 8 of 2018 in Government Gazette No. 41522 (21 March 2018); Proclamation No. 1 of 2020 in Government Gazette No. 42947 (10 January 2020); Proclamation No. 8 of 2020, in Government Gazette No. 42994 (4 February 2020); and Proclamation No. 24 of 2020 in Government Gazette No. 43563 (28 July 2020).

that there may be self-incriminating testimony and regulates its inadmissibility in subsequent criminal proceedings.

33. Regulation 8(2) creates a clear direct use immunity preventing admission of any self-incriminating testimony in criminal proceedings other than for prosecution for failure to (i) appear, (ii) remain in attendance when required to do so, (iii) be sworn or make affirmation, (iv) answer fully and satisfactorily, or (v) produce a book, document or object at a commission of inquiry.

34. Regulation 8 therefore provides support for CASAC's submission that a witness before the Commission cannot refuse to answer any question that may be self-incriminating.

35. Regulation 12(2) is the next relevant provision which states that

(2) *Any person who—*

(a) *appears before the Commission and refuses or fails, on any grounds other than those contemplated in section 3 (4) of the Commissions Act, 1947, to answer fully and satisfactory, any question lawfully put to him or her;*

. . .

is guilty of an offence and liable on conviction —

(i) *in the case of an offence referred to in paragraph (a), . . . to a fine, or to imprisonment for a period not exceeding 12 months”*

(emphasis added)

36. Again, CASAC relies on the formulation of this Regulation to establish that self-incrimination is not a valid reason to refuse to answer questions before the Commission.

The Commission's Rules

37. Rule 6.1 of the Rules of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (GN 397 of 2018) further enables this approach to ensure that the Commission obtains all of the the testimony required to investigate its Terms of Reference, and states that:

"The Commission may receive any evidence that is relevant to its mandate, including evidence that might otherwise be inadmissible in a court of law. The rules of evidence applicable in a court of law need not be strictly applied to the determination of the admissibility of evidence before the Commission."

(emphasis added)

The Correct Legal Approach

38. These provisions, read together, mean that --

38.1. a witness appearing before the Commission is lawfully obligated to answer fully and satisfactorily all questions put to them;

38.2. the privilege against self-incrimination or right to remain silent is unavailable and a witness may not decline to answer a question put to them during the Commission on that basis; and

38.3. other privileges remain available to a witness testifying before a commission of inquiry, such as legal professional privilege.

39. This limitation on a witness' rights is reasonable and justifiable under section 36 of the Constitution, as this Court previously held twice in 1996:

39.1. In *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others (No 2)*¹⁷, this Court determined that section 25 of the Interim Constitution¹⁸ meant that the testimony of a witness in an inquiry held under section 417 of the repealed Companies Act, No 61 of 1073 could only be admitted for use in a prosecution of that person for an offence arising from their participation in the inquiry (such as a charge relating to the administering or taking of an oath or affirmation, the giving of false evidence, or a failure to answer questions fully and satisfactorily).

39.2. The Court confirmed that the witness to be examined has no choice but to attend the inquiry and answer all questions put by the inquiry, even if the answer is self-incriminating.¹⁹

39.3. It then held that this compulsion to give self-incriminating evidence was constitutional when it was coupled with a direct use immunity in a subsequent criminal trial and when subject to a judicial discretion to exclude derivative evidence at that possible trial.²⁰

39.4. This approach was confirmed by this Court in *Bernstein and Others v Bester NO and Others*.²¹

¹⁷ 1996 (4) BCLR 441 (CC)

¹⁸ Which was materially similar in the relevant respects to section 35 of the Final Constitution.

¹⁹ At para [70]

²⁰ At para [153] and [185] (“As long as incriminating evidence is not admissible at the criminal trial and the use of “derivative evidence” at such trial is made dependant on such use being subject to “fair criminal trial” standards, the rule against self-incrimination is adequately protected”)

²¹ 1996 (4) BCLR 449 (CC), see e.g. paras [137] to [141]

40. It is an approach suited to the circumstances of a judicial commission of inquiry and already reflected in the Regulations and Rules of the Commission referred to above.

PRAYER 4 OF THE NOTICE OF MOTION

41. Prayer 4 in the Commission's Notice of Motion requests this Court to make an order that:

"...when appearing before the Commission and after he has taken the oath or affirmation, the respondent [Mr Zuma] shall answer any questions put to him by the designated Evidence Leader(s) and the Chairperson of the Commission, subject to the privilege against self-incrimination, and may not rely on the right to remain silent."

42. In its heads of argument²², the Commission submits that

"President Zuma is thus a compellable witness and does not have a right to remain silent before the Commission. Although he retains his privilege against self-incrimination, he cannot rely on this privilege to resist appearing as a witness or to refuse to answer at all (i.e. to remain silent). Rather, the privilege must be claimed in respect of each question and the judicial officer, before allowing the claim of privilege, must satisfy himself that "there is reasonable ground to apprehend danger to the witness from his being compelled to answer". This danger must be "real and appreciable and not of an imaginary and unsubstantial character"

²² At p 42 para 60

and it relies on *R v Kuiper* 1915 TPD 308 at 316, *R v Boyes* (1861) 1 B & S 311 at 330, 121 ER 730 at 738 and *S v Carneson* 1962 (3) SA437 (T) at 439H as authority for these submissions.

43. With great respect for the Commission's counsel, this submission is incorrect because it takes no account for the clear limitation of the privilege against self-incrimination to arrested and accused persons in section 35 of the Constitution. In this regard, CASAC submits that:

43.1. First, there is no reason to distinguish between the privilege against self-incrimination and the right to silence in section 35 of the Constitution. The applicant accepts that the latter right does not apply to a witness before the Commission (see Heads of Argument p 42 para 59). The same is true of the former privilege. There is no legal or principled basis to distinguish between sections 35(1)(a) and 35(1)(c) or between sections 35(3)(h) and 35(3)(j) of the Constitution. Both the privilege against self-incrimination and the right to silence are only available to arrested or accused persons, not witnesses before a commission of inquiry.

43.2. Second, the authorities cited by the applicant do not assist since they all relate to the rights of accused person's in a criminal prosecution in court, and did not consider the specific legislative and regulatory provisions that determine the scope of privilege before a commission of inquiry.

43.3. Third, the applicant's submission ignores this Court's decisions in *Ferreira v Levin* and *Bernstein*.

43.4. Fourth, the applicant's submission is inconsistent with the holistic interpretation of the Constitution, legislation, Regulations and Rules of the Commission set out above. Read together, section 35 of the Constitution, sections 3 and 6 of the Commissions Act, Regulations 8 and 12, and Rule 6 of the Commission all anticipate that self-incriminating evidence must and will be given to fully and satisfactorily answer questions posed to a witness at the Commission so as to fulfil the objectives and purpose of a commission of inquiry. They then restrict how that testimony may be admitted into evidence later to a single instance: at a criminal trial for an offence related to the witness' conduct at the Commission.

43.5. Fifth, section 35 of the Constitution is clear in its limitation of the privilege against self-incrimination and the right to remain silent to only arrested or accused persons. No residual right or common law basis exists to which a witness before a commission of inquiry may appeal. The legal framework set out above is complete in its creation of the privilege and the right, and in identifying to whom it is available and in what circumstances.

44. For these reasons, CASAC submits that Prayer 4 of the Notice of Motion should be reformulated by deleting the unnecessary latter portions of it to read instead that it is ordered that

"...when appearing before the Commission and after he has taken the oath or affirmation, the respondent [Mr Zuma] shall answer any questions put to him by the designated Evidence Leader(s) and the Chairperson of the Commission".

45. We stress that the same legal position would hold for any other witness who appears before the Commission, not just Mr Zuma.

46. CASAC submits that this is the only approach that ensures the proper function of a commission of inquiry while protecting the constitutional rights of arrested and accused persons.

CONCLUSION

47. CASAC submits that the relief sought in prayer 4 of the Notice of Motion should be considered in light of the interpretation of the Constitution, Commissions Act, Regulations and Rules of the Commission set out above.

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24 December 2020

TABLE OF AUTHORITIES

Legislation, Regulations and Rules

Commissions Act, No 8 of 1947

Constitution of the Republic of South Africa, 1996

Criminal Procedure Act, No 51 of 1977

Terms of Reference of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State

Proclamation No. 3 of 2018

Regulations of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State

Government Notice No. 105, Government Gazette No. 41436 (9 February 2018), Proclamation No. 8 of 2018 in Government Gazette No. 41522 (21 March 2018); Proclamation No. 1 of 2020 in Government Gazette No. 42947 (10 January 2020); Proclamation No. 8 of 2020, in Government Gazette No. 42994 (4 February 2020); and Proclamation No. 24 of 2020 in Government Gazette No. 43563 (28 July 2020)

Rules of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State

Government Notice 397 of 2018

Caselaw

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House of Commons Public Administration Select Committee Government by Inquiry: Volume 1

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(Issue 1: 2007)