

Exhibit: the Madlanga Commission — rule-of-law breakdown and the state's inability to protect

Supporting exhibit to the "Connect the Dots" memo and the USCIRF submission. Compiled 15 June 2026 from primary and reputable secondary sources (the Commission's own record at criminaljusticecommission.org.za; AP News; SAnews / gov.za; National Treasury; SAFLII statute text; Al Jazeera; IOL; News24; eNCA; Mail & Guardian; The Citizen; CRL Rights Commission). Each load-bearing claim is tagged [PROVEN], [CHARGED], [ALLEGED] or [PENDING]. Where data does not exist, that is stated plainly.

What this exhibit establishes. The Madlanga Commission contains no religious thread, and is not offered as evidence of religious persecution. Its relevance is narrower and factual: it is the South African state's **own** record showing that constitutional guarantees do not govern enforcement. Organised crime reached the senior ranks of the police; the criminal-justice system was, on the testimony, bent by political power; and a witness before the President's own inquiry was murdered. This is country-conditions evidence that the state is, in practice, **unable or unwilling to protect** — the question that bears on any claim that South Africa's liberal constitution is, by itself, sufficient protection.

1. What the Commission is [PROVEN]

- **Full name:** the Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System — the "**Madlanga Commission**."
- **Trigger:** on **6 July 2025**, KwaZulu-Natal provincial police commissioner **Lt Gen Nhlanhla Mkhwanazi** held a televised briefing accusing the national police leadership of colluding with criminal syndicates and shutting down investigations.
- **Established:** President **Ramaphosa** announced the inquiry on **13 July 2025**, suspending the Police Minister and appointing **retired Constitutional Court Justice Mbuyiseli Madlanga** as chair (evidence leaders include Adv. Matthew Chaskalson SC and Adv. Adila Hassim SC; Adv. Terry Motau SC withdrew in Sept 2025). Justice Madlanga is an independent, respected jurist; this is not a captured body.
- **Hearings:** opened **17 September 2025** after an August false start; ran roughly weekly, reaching **Day 100 on 4 May 2026** and continuing through Day 109+ (15 May 2026) into June 2026.
- **Final report:** due to the President by **31 August 2026** (a deadline already extended once). **There are therefore no formal findings yet** — what exists is testimony, allegation, and interim criminal and disciplinary action.

2. The core allegations [ALLEGED — denied]

That then-Police Minister **Senzo Mchunu** and suspended Deputy National Commissioner **Lt Gen Shadrack Sibiya** interfered in investigations and **disbanded the Political Killings Task Team (PKTT)** — a unit probing assassinations — to shield a Gauteng-based criminal network (the "**Big Five**") tied to businessman **Vusimuzi "Cat" Matlala**, who held the **R360-million SAPS "Medicare24"** health contract (awarded June 2024, later cancelled). Mchunu **denies** the allegations and calls them "baseless." Sibiya testified (Feb 2026) but **could not produce the documents** he said authorised disbanding the PKTT **[PROVEN]**. North-West businessman **Brown Mogotsi**, named as a "Big Five" figure, gave lengthy testimony (Nov 2025–May 2026) and is in custody on unrelated charges **[PROVEN]**.

3. Interim outcomes

The verified state of play as of 15 June 2026:

| Figure | Role | Status |
|---------------------------------|--------------------------------------|--|
| Senzo Mchunu | Police Minister | On special leave since July 2025; testified; not charged on the cartel allegations (denies them); fate awaits the report [PENDING] |
| Fannie Masemola | National Police Commissioner | Suspended ~23 Apr 2026 and [CHARGED] with four counts under the Public Finance Management Act over the irregular ~R228m Medicare24 award; one of 16+ co-accused (incl. Matlala); case postponed to 26 June 2026 . Acting commissioner: Lt Gen Puleng Dimpane |
| Shadrack Sibiya | Deputy National Commissioner | Suspended; testified Feb 2026 [PROVEN] |
| ~12 senior SAPS officers | incl. brigadiers + a major-general | [CHARGED] — arrested March 2026 on corruption/fraud tied to Medicare24; NPA indicated 16+ may face trial |
| Vusimuzi "Cat" Matlala | businessman | In maximum-security custody on unrelated gun-running / attempted-murder charges; co-accused in the Medicare24 case [CHARGED] |
| Julius Mkhwanazi | Ekurhuleni Metro Police Deputy Chief | Suspended Nov 2025; facing 13 disciplinary charges [CHARGED — disciplinary] |

Most significantly, the **sitting National Police Commissioner himself** was criminally charged and suspended over the very contract at the heart of the scandal — the rot reached the top of the police. To be precise, Masemola's charges are **financial-management (PFMA)** charges tied to the contract; he is **not** accused of cartel membership.

4. The assassination of "Witness D" [PROVEN]

- **Marius van der Merwe**, a former **Ekurhuleni Metro Police** official, testified before the Commission under the cover name **"Witness D" on 14 November 2025**, giving evidence of **murder, torture and a cover-up**.
- **Three weeks later, on 5 December 2025, he was shot dead in front of his family** outside his home in **Brakpan** (Gauteng).
- The man arrested and charged with the killing, **Matipandile Sotheni, is himself a former SAPS Special Task Force member** — the alleged assassin came from inside the state's own elite policing unit. President Ramaphosa publicly condemned the murder.

When the state cannot protect a man who testifies before the President's own commission — and the alleged killer is one of its own former special-forces operators — its paper guarantees protect no one reliably. This is the human face of a threat that operates beneath the constitution.

5. What it shows — rule of law and "unable or unwilling to protect"

1. **Constitutional guarantees do not govern enforcement.** The threat to a small religious community operates beneath the constitution, through enforcement practice the constitution has not restrained. The Commission is the state's own evidence of the gap between paper rights and lived enforcement.
2. **The state is, in practice, unable or unwilling to protect.** Where the police are penetrated by organised crime and witnesses are killed, a minority fearing for its freedom of worship has no reliable state guardian to appeal to.
3. **It establishes the character and capacity of the state.** On the testimony, political power redirected criminal justice and disbanded units that protect the vulnerable. Commentators describe it as **"State Capture 2.0,"** the unfinished business of the Zondo Commission now reaching the criminal-justice core.

6. Context and balance

The Commission's existence demonstrates that South Africa retains people of integrity and functioning formal institutions: an independent retired Constitutional Court justice runs open hearings; a sitting minister and the national police commissioner were suspended; senior officers were arrested; Parliament is exercising oversight. This is not a failed state.

The point, however, is the **depth of the documented capture**. Organised crime reached the senior ranks of the police; a unit investigating assassinations was disbanded; the national commissioner himself stands charged; and a witness before the President's own inquiry was murdered, allegedly by a former member of the state's own Special Task Force. **An inquiry is not protection.** By the time a country needs a judicial commission to discover whether its police serve criminals, the assurance that a small religious community can rely on the state to protect its worship is already gone. Analysts also

note that South African commissions (Zondo included) have produced **few convictions** — evidence of effort, not yet of results.

7. The FATF dimension — exited, now at risk [PROVEN]

South Africa **formally exited the FATF "greylist" on 24 October 2025** (National Treasury) after two years of reforms. Within eight months, the Madlanga revelations of police–cartel links have put those gains at risk: the next FATF evaluation (beginning early 2026, concluding **October 2027**) will assess the **effectiveness of police investigations, prosecutions and convictions** of serious money-laundering — the exact capacity the Commission has thrown into doubt, with top police implicated. The rot is serious enough to threaten South Africa's hard-won financial standing and to risk re-listing.

8. The religious-freedom landscape on return

8a. CRL Section 22 — live and contested [PENDING / ALLEGED]

- The CRL Rights Commission **launched its Section 22 Committee for the Christian sector on 6 October 2025**, framing it publicly as **voluntary self-regulation / peer review** to curb abuse (it cites real scandals — congregants made to ingest petrol or snakes) and **expressly denies** seeking "state regulation of religion." The committee is to draft guidelines within ~a year; recommendations may go to the National Assembly **by end-2026**.
- **The process is, however, fracturing.** A draft framework leaked in early 2026 reportedly called for a *legislative charter* for churches — **contradicting the CRL's public denials**. The committee's own Christian-sector chair, **Rev. Prof. Musa Xulu, resigned in January 2026, calling it a "predetermined agenda of state control of religion."** The **South African Church Defenders (SACD) have taken it to the Gauteng High Court** to annul the committee, and **thousands marched** in protest (early 2026). An insider chair resigning with that specific accusation is significant corroboration.
- **Current status:** as of June 2026 this is a **contested regulatory process, not enacted law** — a trajectory toward the model the CRL has named (Rwanda), corroborated by an insider resignation and by litigation, not a statute already closing churches.

8b. The Hate Speech Act — enacted but not yet in force [PROVEN]

- The **Prevention and Combating of Hate Crimes and Hate Speech Act (Act 16 of 2023)** was signed and gazetted (14 May 2024), and **carries up to 5 years' imprisonment** for the hate-speech offence (more for repeat offences). **It has not been brought into operation:** there is **no commencement proclamation**, the **implementing regulations were still in draft** (published for comment late 2025; comment closed **28 January 2026**), and as of June 2026 the Act **remains inoperative**. There have accordingly been **zero** prosecutions under it.
- **The statutory religious carve-out is broader than "sermon-only."** Section 4 exempts **bona fide religious expression** (interpretation, teaching, proselytising) that **does not advocate hatred constituting incitement to cause harm**. The "sermon-only" reading came from then-Deputy

Justice Minister John Jeffery's *commentary* during the bill's passage, not the statute. The substantive concerns (FOR SA, ADF International) are that the definitions of "harm" and "incitement" are **vague and could be weaponised**, and that courts have already **rejected religious belief as a defence** to *civil* hate-speech findings (the Bougardt line, under PEPUDA — see §8c).

- Stated accurately, the Act is **imminent, not live**: South Africa has enacted — though not yet brought into force — a Hate Speech Act that will expose public religious expression to criminal liability of up to five years, with only a narrow good-faith carve-out that credible religious-liberty bodies warn is vague enough to reach traditional Christian teaching.

8c. PEPUDA, the Equality Courts, and the enforcement record [PROVEN]

- The live instrument today is the **Equality Act (PEPUDA, Act 4 of 2000)** and its **civil Equality Courts**, plus **§8(d)**, which treats religious practice that "impairs the dignity of women and undermines equality" as unlawful discrimination — reaching into doctrine.
- **Actual cases are civil, not criminal, and involve genuinely extreme speech**: Pastor **Oscar Bougardt** was repeatedly found liable for anti-gay hate speech (statements like calling for "ISIS... to rid South Africa of the homosexual curse"); courts held **religion is not a defence**. In **August 2025** the Equality Court found EFF leader **Julius Malema** guilty of hate speech for "kill" rhetoric (later overturned on appeal). No pastor has been jailed, and no one has been criminally prosecuted, for ordinary preaching or for communion.

8d. What is, and is not, criminalised [PROVEN]

- **Not criminalised in normal times**: communion / the Lord's Supper, baptism, prayer, ordinary preaching and public witness. South Africa's Constitution (s.15) protects these and churches operate openly.
- **The documented basis for the "criminalised worship" concern is the COVID precedent** (see the separate COVID-Enforcement exhibit): under emergency Disaster Management Act powers the state **did** ban communion, baptism and singing, broke up services, and exposed conveners to jail — demonstrating both the willingness and the machinery, which could be reactivated. That precedent, together with the *enacted-but-dormant* Hate Speech Act and the *contested* CRL trajectory, is the factual anchor.

9. U.S. asylum-law context [reference — not legal advice]

- A refugee is someone unable or unwilling to return "because of persecution or a well-founded fear of persecution" on a protected ground (race, **religion**, nationality, political opinion, particular social group) — **8 U.S.C. §1101(a)(42)**.
- Prosecution under a law of general application is generally *not* persecution (cf. *INS v. Elias-Zacarias*, 502 U.S. 478 (1992)) — **unless** it is **selectively or pretextually enforced** against the group, the **punishment is disproportionate** or itself persecutory, or it **forbids the exercise of a fundamental right** (such as religious practice) so that enforcement *is* suppression.

- On that standard, a compulsory licensing regime that a community cannot conscientiously accept would forbid the only worship its convictions permit — closer to *suppression of religious practice* than to a neutral public-order law.
- The "**unable or unwilling to protect**" element is established through **country-conditions evidence** of police impunity and state incapacity. The Madlanga Commission — the state's own record — is precisely that kind of evidence.

Sources

Commission, allegations, roster, witness killing - Origins, Ramaphosa's response, Mkhwanazi & Mchunu, Big Five — AP News (multiple, Jul 2025–Apr 2026): [accusation](#); [suspension & inquiry](#); [Mkhwanazi testimony](#) - Hearings opened 17 Sep 2025; timeline — [The Citizen](#); Commission record — [criminaljusticecommission.org.za](#) - Masemola suspended & charged (4 PFMA counts, 16+ co-accused, postponed to 26 Jun 2026; Dimpane acting) — [SAnews](#); [Al Jazeera, 23 Apr 2026](#); [IOL, 13 May 2026](#); [eNCA](#); [Wikipedia: Fannie Masemola](#) - 12 senior officers arrested Mar 2026 — [Daily Maverick, 12 May 2026](#) - Sibiya fails to produce PKTT documents — [EWN, 19 Feb 2026](#) - Witness D / Marius van der Merwe assassination (Brakpan, 5 Dec 2025) & arrest of ex-STF member — [SAnews](#); [News24, 8 Dec 2025](#); [The Presidency](#) - Parliament "serious institutional crisis" — [Daily Maverick, 28 May 2026](#) - Final report due 31 Aug 2026 — [NovaNews](#)

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U.S. asylum law - Refugee definition — [8 U.S.C. §1101\(a\)\(42\)](#), [Cornell LII](#); persecution-vs-prosecution — *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

The legal points in §9 are general doctrine offered as context, not legal advice; the governing authorities remain the FOR SA Legal Opinion and U.S. immigration counsel.