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**CHAIRPERSON'S STATEMENT OF FACTS AND POINTS OF CORRECTION OR CLARIFICATION IN RESPONSE TO MR JACOB ZUMA'S AVERMENTS ABOUT AN ALLEGED HISTORICAL, PERSONAL, FAMILY AND PROFESSIONAL RELATIONSHIP BETWEEN THE CHAIRPERSON AND MR JACOB ZUMA AS SET OUT IN MR ZUMA'S AFFIDAVIT LODGED IN SUPPORT OF HIS APPLICATION FOR THE CHAIRPERSON'S RECUSAL**

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Personal relationship between myself and Mr Zuma

1. It is true that Mr Zuma and I have known each other from the early 1990s when I was still in private practice as a lawyer in Durban and Mr Zuma was one of the leaders of the African National Congress (ANC) in KwaZulu-Natal. My interactions with Mr Zuma from the early 1990s to the time of my appointment as a Judge in 1997 were connected with my work as an attorney and my association with the ANC of which I was a supporter.
2. After my appointment as a Judge in 1997, my interactions with Mr Zuma were of a personal nature and largely occurred when we met in government functions. Our personal relationship has been a cordial and pleasant one over the years but did not, generally speaking, involve discussions of any serious matters. This had to be so because we would normally interact when we met at the opening of Parliament or other government or State functions. However, there were two or so occasions when Mr Zuma was not in

government when he asked for a meeting with me and I agreed to meet him. I think that this would have been somewhere between 2005 and 2007. He was staying in a hotel in Durban and I met him. There was one time when I also asked for a meeting with him about 13 or 14 years ago when he was still out of government and I met him in his Forest Town house in Johannesburg. On that occasion I wanted to raise with him a matter that I considered to be of public importance.

3. I do not think that I had any other one-on-one meetings with Mr Zuma other than the ones referred to above. I leave out one that I deal with under the topic of “professional relationship”. The meetings referred to above all happened more than thirteen years ago.
4. As far as I recall, I never had any one-on-one meeting with Mr Zuma throughout the period of nine (9) years when he was President.
5. When Mr Zuma’s late wife had passed on many years ago – maybe 18 or 20 years ago, I, like many other people, did go to his official residence as the then Deputy President to see the family.
6. As far as I remember I have been to Mr Zuma’s residences referred to above on the limited occasions mentioned. However, I may have been to his Durban residence once.
7. Although Mr Zuma and I have a cordial relationship and have over the years interacted with each other pleasantly wherever we met, mostly in government functions, Mr Zuma’s statement that we are friends is not accurate. In this regard I highlight the following:
  - (a) Mr Zuma has never been to any of the houses in which I have lived with my family since the early 1990s and I have never invited him. He only met my wife at the opening of Parliament or other government function.

He has also never been to any of the places in Gauteng in which I have lived over the past 23 or 24 years since my appointment as a Judge in 1997.

(b) Mr Zuma and I do not socialise, and, have never socialised, together. I accept that there are functions – especially government functions - which he attended and I attended and that on such occasions we would greet each other and have brief conversations. After I had been elevated to the Bench in 1997, in January 1998 my law firm held a gala dinner in Durban for my farewell from my law firm and many people were invited including His Majesty King Goodwill Zwelithini but Mr Zuma was not among those who were invited. I have never invited Mr Zuma to any family function including my birthdays since I met him in the early 1990s. He has also never invited me to any of his birthday parties since we got to know each other.

(c) Mr Zuma does not get told when there is a death in my family. As a result, he has never attended any of the family funerals we have had since I got to know him even though, from the early 1990s to-date, I have lost four siblings and my mother. I have never attended the funeral of any member of the Zuma family nor does Mr Zuma inform me when there has been any death in his family.

(d) To the best of my recollection since the 1990s I have never shared any private meals with Mr Zuma.

(e) I have never been to Mr Zuma's Presidential Office when he was President nor did I go to his official residence.

8. In par 29 of his affidavit Mr Zuma says:

“I can recall an occasion when Deputy Chief Justice Zondo was elevated to the bench, we discussed whether our personal relationship would jeopardize his judicial career. We agreed that we would relate in a manner that would ensure that his judicial career is not adversely affected. I understood and appreciated that he wanted to draw a line in my relationship with him that would not create the public perception that he relied on me, as President, to rise in his judicial career”

9. No such discussion ever took place nor could have taken place between Mr Zuma and myself when I was elevated to the Bench. My elevation to the Bench occurred in 1997. Mr Zuma says that he understood and appreciated that I wanted to draw a line in my relationship with him so as not to create the public perception that I relied on him, as President, to rise in my judicial career. Mr Zuma was not President in 1997. He was MEC for Economic Development in KwaZulu-Natal. As he was not President and was only an MEC, he could not have had any influence on my rise in my judicial career.
10. Mr Zuma says that the personal relationship between the two of us is such that I should have declined my appointment as Chairperson of the Commission and that it renders me biased against him. In 2011 as a Judge of the High Court in Pretoria I heard an application concerning a contested mining right where one of the contesting companies belonged in part to Mr Duduzane Zuma, Mr Jacob Zuma’s son. I heard full argument in that matter and gave judgment against, among others, the company in which Mr Duduzane Zuma had an interest. There was never a complaint that I should have recused myself in that matter or that I had found against Mr Duduzane Zuma’s company because I was biased against Mr Zuma’s family. That was the *Sishen* matter.

11. From November 2011 to May 2012 when I was an Acting Justice of the Constitutional Court and during the past eight years since my appointment as Justice of the Constitutional Court I have sat in a number of matters which involved Mr Zuma as President in which the Court has given judgments – sometimes against him and sometimes in his favour – and Mr Zuma has never complained over all these years that I had a close relationship with him which disqualified me from sitting in matters in which he was involved. In none of those matters did Mr Zuma ever bring an application for my recusal.

12. Some of those cases are:

- (a) *Economic Freedom Fighters v Speaker, National Assembly & others* 2016 (3) SA 580 (CC) (Nkandla Judgment)
- (b) *Economic Freedom Fighters v Speaker, National Assembly & others* 2018 (2) SA 571 (CC)
- (c) *Democratic Alliance v President of the Republic of South Africa & others* 2013 (1) SA 248 (CC)
- (d) *Sigcau v President of the Republic of South Africa* 2013 (9) BCLR 1091 (CC)
- (e) *Nxumalo v President of the Republic of South Africa* 2014 (12) BCLR 1457 (CC)
- (f) *Magidiwana and Others v President of the Republic of South Africa and Others* 2013 (11) BCLR 1251 (CC)
- (g) *United Democratic Movement v Speaker of the National Assembly and Others* 2017 (8) BCLR 1061 (CC); 2017 (5) SA 300 (CC)

### Professional relationship between myself and Mr Zuma

13. While I was still in private practice as an attorney in the 1990s, I did interact with ANC leaders in KwaZulu-Natal including Mr Zuma on matters relating to the ANC and civic matters. However, Mr Zuma was never my client in his personal capacity. However, I would have discussed with him and other ANC leaders some legal issues on an informal basis even if no legal proceedings were instituted. My partner in my law firm would also have interacted with ANC leaders including Mr Zuma. I confirm that Mr Zuma and other ANC leaders approached me at the time and asked me to provide legal services to King Goodwill but I suggested that my partner, Mr Mathe, be the one because he had family ties with the Royal family. In 1996 I did have a one-on-one meeting with Mr Zuma in my law firm when I had been instructed by a certain client to institute certain legal proceedings against him and we met to discuss the matter. I ended up not instituting those proceedings because I got appointed as an Acting Judge in the Labour Court before instituting the proceedings and my client had to find another lawyer.

### My announcement of 21 September 2020

14. The announcement I made on 21 September 2020 was not made in a media conference. It was made at the commencement of the Commission proceedings on the day when Mr Zuma was supposed to have appeared before the Commission. Mr Zuma's attorneys had, prior to that, sent the Commission a letter dated 1 September 2020 a copy of which is attached marked "AA". It also occurred after the failure by Mr Zuma to comply with a Regulation 10(6) directive dated 27 August 2020 a copy of which is attached marked "BB", and giving no explanation why he had not complied and why he was not applying for an extension of time.