

**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 Baitse Rangata

REPRESENTATIVES

Adv KD Moroka (SC) – DoJ representative
Adv Varney (SC) – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Adv Bridgette Nthambeleni (for Adv Jiba)
Adv B Lukhele-NPA Representative

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INQUIRY RESUMES

CHAIRPERSON: Good morning to you all. Mr Semenya.

ADV SEMENYA: Good morning, chair, and good morning to the commissioners as well. Today we have scheduled two witnesses, starting with Adv Mashabane, who ...(intervenes)

CHAIRPERSON: No, Mashabane was yesterday.

ADV SEMENYA: Sorry. Advocate Sindane, sorry, as well as ...[intervenes]

CHAIRPERSON: Who, advocate?

10 ADV SEMENYA: Sindane, Ms Sindane.

CHAIRPERSON: Oh, we are starting with Ms Sindane, yes.

ADV SEMENYA: The other witness we will have virtually later, chair, for the day.

CHAIRPERSON: Okay, thank you. Thank you. Ms Sindane, are you going to give your evidence? Good morning.

MS SINDANE: Good morning.

CHAIRPERSON: Yes, Are you going to give your evidence under oath or affirmation?

MS SINDANE: Under oath.

20 CHAIRPERSON: Do you swear that the evidence you will give will be the truth, the whole truth, and nothing but the truth? If so, raise your right hand and say, "So help me, God".

MS SINDANE: So help me, God.

CHAIRPERSON: Thank you. Ms Rangata.

TERRESA NONKULULEKO SINDANE (duly sworn states)

EXAMINATION BY MS RANGATA: Thank you, chair, and good morning to you, chair, and the commissioners.

COMMISSIONER KGOMO: Good morning.

COMMISSIONER GABRIEL: Good morning.

MS RANGATA: Thank you. Morning, Ms Sindane.

MS SINDANE: Good morning.

MS RANGATA: Welcome, and thank you for coming to the commission and to assist the commission with its work. We really appreciate your time. We are going to start with your evidence, and I
10 would like to take you straight to the bundle that is in front of you, your statement, or a document that appears as a statement or affidavit of Theresa Nonkululeko Sindane, which appears on page 2342 of that bundle. Are you there? Can you see that?

MS SINDANE: Yes, I can.

MS RANGATA: Is that your affidavit?

MS SINDANE: Yes, it is.

MS RANGATA: All right. If you go to page 2346, there is a signature there. Would you confirm that to be your signature?

MS SINDANE: I do.

20 MS RANGATA: Would you then confirm that this affidavit represents your evidence, and it is your evidence to this commission?

MS SINDANE: Yes, I do.

MS RANGATA: Thank you very much. We will then start by yourself introducing yourself to the commissioners. In that context, you can speak very shortly about your employment and your educational

background.

MS SINDANE: Thank you very much. Do I switch this thing on?

MS RANGATA: It is already on, you can speak.

MS SINDANE: All right, thank you. My name is Terresa Nonkululeko Sindane. I am currently employed by a company, which is a private company in the civil engineering space, but that is all I am willing to say about that company for the purposes of this.

MS RANGATA: Thank you.

MS SINDANE: But prior to being employed by this company, I have
10 been in the company now 190 years exactly. Prior to being employed
by my current company, I was employed as the Director General in
the Department of Justice and Constitutional Development. I started
with the Department of Justice, if I can just call it "Justice". I started
my employment there in January of 2010, a completed my term, my
first term was a three-year term.

I completed my term, and then I got an extension, which led
to me leaving in 2016. So that is where I would like to leave exactly
my term of office. Now just to specify the responsibilities I was
employed to do. The Department employs the Director General in
20 line with and in terms with the Public Service Commission Act, so
...[intervenes]

MS RANGATA: Sorry, just to interrupt a little bit, you mentioned that
you were employed by the Department of Justice and Constitutional
Development, and as you say that you will leave it as Department of
Justice, and I will also follow suit. So you were employed by the

Department of Justice from 2010 as the Director General on a three-year term, which would have lapsed in 2013.

MS SINDANE: Yes.

MS RANGATA: And who was the Minister at that time, the Minister of Justice?

MS SINDANE: It was Minister Jeff Radebe.

MS RANGATA: All right, okay, thank you. What were the conditions of your extension? Were you going to be extended for another term?

MS SINDANE: Yes, it was extended for another three-year term.

10 MS RANGATA: All right, thank you very much. And am I correct ... (intervenes)

COMMISSIONER KGOMO: And the Minister was Masutha there?

MS SINDANE: Masutha came ... (intervenes)

COMMISSIONER KGOMO: Later.

MS SINDANE: Later.

COMMISSIONER KGOMO: Oh, okay.

MS SINDANE: Yes, but he was my boss as well, but it was later than that.

COMMISSIONER KGOMO: Okay.

20 MS RANGATA: Thank you, Commissioner. Just to be clear, in 2015, between 2015 and 2016, that is the period where you then reported, your new minister was Minister Masutha?

MS SINDANE: 20?

MS RANGATA: 2016/2016.

MS SINDANE: Yes, okay, thank you.

MS RANGATA: We will now go back to your affidavit on page 2342, and you state the reason why you are here before this commission, that you have received a request for information, which just for clarity, we can accept that you are not an implicated person to this commission. You are a person that has been identified as a person of importance to share information, so you have received a request for information in terms of rule 3.1 of the rules of the Commission.

MS SINDANE: Thank you, good to know.

MS RANGATA: Yes, and you state under paragraph 3, you outline
10 the reason why you are here, and you make reference in the next page, which is 2343, under paragraph 4, you restate the terms of reference of this commission. And you go further under paragraph 5, which I would like you to read into the record, where you deal with the specific request that you have received from this commission, which is paragraph 5, 6, and 7. Would you please read that into the record?

MS SINDANE: Paragraph 5, did you say paragraph 5?

MS RANGATA: Paragraph 5, yes.

MS SINDANE: Okay:

20 "The letter further requested that I assist the commission and furnish it with an affidavit that addresses my knowledge of relevant events and matters. In particular, my affidavit should set out:

5.1 Department in relation to TRC cases.

5.2 The manner in which I supported the ministry in the day-to-day operations

concerning TRC cases, including any oversight, coordination, advisory, administrative, or decision-making functions performed by me.

MS RANGATA: You can proceed, 6 and 7?

MS SINDANE:

- 10 "6. My overall involvement in and contribution to the management, investigation, prosecution, monitoring or administration of TRC cases, including the steps taken by me in the execution of my responsibilities; and
7. Any additional information that may assist the commission in understanding my role, responsibilities, and involvement in matters relating to TRC cases during my tenure."

MS RANGATA: Thank you. And you speak about your responsibilities in paragraph 8.3, on that page 2343, and you state:

- 20 "Your responsibilities to include operational, strategic policy development and implementation and overall management, including accountability for the overall budget of the Department. Your responsibility entails oversight of the management and the use of the budget by the

entities then reporting to the Department of Justice and Constitutional Development, of which the National Prosecuting Authority (NPA) was but one."

That is your responsibility as the DG.

MS SINDANE: Yes.

MS RANGATA: Can you take this commission to the relevant provisions or the legislation that empowers you, the enabling provisions that enables you to carry out your responsibilities as the
10 DG? And I am going to, just to make it easier for you, I am going to lead you to section 7 of the Public Service Act, and I would like you, in particular, to speak to section 7.3. You can deal with (a) and (b) for the purpose of this commission. Did you find it?

MS SINDANE: Yes, I am almost there, thank you.

MS RANGATA: Yes.

MS SINDANE: So may I just confirm that you want me to read section 7?

MS RANGATA: Yes, you do not have to read the entire section. You can speak to the relevant provisions, which is 7.1 and 2, but in
20 particular I want you to deal with 3(b).

MS SINDANE: Okay, thank you. So my appointment, I would confirm that I was appointed under the provisions of the Public Service Act, which if any transgressions that I would have committed, if any, I would then have had to be dealt with through the Public Service Commission. The second paragraph, or section 3(a) of the Act,

maybe I will read it?

"Each department shall have a head, who shall be the incumbent of the post on the establishment bearing designation mentioned in column 2 of Schedule 1, 2, or 3 opposite the name of the Department."

So and then if I move to (b):

10 "Subject to the provisions of paragraph (c) and (d), the head of department shall be responsible for the efficient management and administration of his or her department, including the effective utilisation and training of staff, the maintenance of discipline, the promotion of sound labour relations, and the proper use and care of State property, and he or she shall perform the functions that may be prescribed."

20 So, effectively, the meaning and my understanding in how I performed these responsibilities was in line with the provisions of the Public Service Act. And if I were to just articulate them in summary, it is the overall administration of the personnel, which will include the recruitment, the issues of discipline, the issues of management of performance by the employees in the Department and related issues. So that will be one of the responsibilities that I would have held.

The second, obviously, would deal with issues of their career incidences, which will be your promotions and related issues, and

then including, obviously issues of discipline if things did not go according to plan. And then the overall administration and the etiquette, the demeanour, the ethics that were prevailing at the time in the Department of Justice, those would have been my responsibilities. Thank you.

MS RANGATA: All right ...[intervenes]

COMMISSIONER KGOMO: Ms Sindane, try to face the chair when you speak, except, of course, when you read. Thank you.

MS RANGATA: Thank you, Commissioner. Yes, indeed, you are
10 speaking to the commissioners, not to me. Thank you so much, thank you so much. You speak about your role and your responsibilities as empowered by section 7 of the PSA, and you describe it more in particular in paragraph 8.5, and you classify it as administrative function, which is definitely not prosecutorial functions.

Can you distinguish between the two, in particular, I would like to draw you closer when you speak, that you make a closer reference that you, as an accounting officer and as a DG of the Department of Justice, of importance is your relationship or the Department's relationship with the office of the National Prosecuting
20 Authority? And what would be that relation, and how do you then bring it closer in terms of your functions, how you would have related, and what those administrative functions would have to be exercised over the NPA?

MS SINDANE: Thank you. Excuse me. The relationship, maybe let me start with my responsibilities, my responsibilities were

administrative in nature, and this means that everything that we needed to do in relation to the NPA was administrative.

So this speaks to issues relating to, as an example, the accommodation, issues of rent, and all of those issues, which are really truly administrative, including, among others, ensuring that the NPA does provide the reports that it should provide.

Not that the reports are coming to me, but the NPA must submit reports as is required in terms of the Act, and sometimes, as per the request of Parliament, which normally was routed direct to the
10 DG of the Department of Justice, and that then I needed to communicate to the NPA and all other entities that the Department of Justice was responsible for.

So as an example, that would then be the administrative responsibilities. It would not go to the heart of the mandate of the NPA, which is prosecutorial in nature, and so that was not my responsibility. My responsibility was the support around that, and in particular, the NPA had the CEO at the time, and who was acting, I must say. So the CEO and myself would then discuss issues that would be relating to the types of needs of an administrative nature
20 that they would have needed.

MS RANGATA: All right, thank you for that. Would your role then as well include issues of budgeting?

MS SINDANE: Absolutely.

MS RANGATA: Yes.

MS SINDANE: So maybe I need to explain how budget works in the

public sector, or at least it used to work 10 years ago ...[intervenes]

MS RANGATA: Sorry to interrupt. Maybe before you speak to that, you can read just for context, then you can explain, on paragraph 8.5, you can read the entire paragraph. I think it puts your response in more clearer detail.

MS SINDANE: Thank you very much:

10 "The NPA's administrative functions specifically, not the prosecutorial functions, reported to the Minister of Justice and Constitutional Development through the DOJ's NCD on issues, one, of budgeting and budget compliance, expenditure management, general compliance, and related matters.

20 This means that during budget allocation process by the Budget Office of the National Treasury, the Director General of the Department and the CEO of the NPA, a position which was also administrative in nature, would attend the budget allocation discussions led by National Treasury as one team. The Director General of the Department of Justice led these discussions from the side of the Justice family."

So there is this process during the NTF where we get invited as departments to go and present to National Treasury the needs, the financial needs, that is of the department. And the NPA would then be

there represented by their CEO, and we will then speak to the needs of the Department within that context.

MS RANGATA: So having said that, would you then say that you would not at any given moment have the expectation of having to make provision for the budgetary issues of the NPA within the Department's budget?

MS SINDANE: Thank you. You are correct. The numbers that ultimately make it to National Treasury, we as all organs of government, not State, all organs of government, we would receive a
10 written communication from National Treasury providing parameters within which we must submit a budget, and issues that are included, not included, whatever needs to be explained.

And that communication will come to my office as the DG, and it will also be shared with the National Prosecuting Authority so that they know what the requirements are for submitting the budget, the timelines, and roughly what is expected to go into the numbers.

The only thing that is not provided for is the quantum, that you must provide X. But overall, on anything else associated with the budget, it will be in that communication from National Treasury which
20 is shared.

We then discuss the numbers, obviously, with the National Prosecuting Authority's CEO, where we then say, well, she will tell us these are the numbers, we will say these are our numbers, and then those numbers are combined, and then they go to National Treasury.

But even though they are combined, they are still articulated

separately, such that there is a very clear determination of which numbers are whose in the bigger scheme of things. So that the DG could not, as an example, and I am using a weird example, could not increase the departmental budget and reduce the NPA budget that would have been provided to the DG by the NPA.

So that budget will go as is. It is only through the negotiations that happen, led by National Treasury, when they say cut a little bit here, cut a little bit there, then each, between us, NPA and ourselves as the Department, we will then adjust the budget
10 according to the instructions that we are being given by National Treasury. So that is how the budgeting process work.

MS RANGATA: Thank you. Would you then accept and recognise the provisions of, I am not going to take you there, I am just going to read for the record, that is the National Prosecuting Authority Act, section 36(2). Would you then recognise what 36.2 says:

"That the Department of Justice must, in consultation with the National Director, prepare the necessary estimate of revenue and expenditure of the Prosecuting Authority."

20 Will that be in line with your evidence?

MS SINDANE: Yes, it would be, except that the discussions would happen with the CEO specifically, because those numbers would have been engaged between the CEO and the National Director of Public Prosecutions.

So what ultimately leaves the NPA to come to the

Department of Justice has been engaged sufficiently, looking at the needs, looking at the portfolio, looking at the mandate, looking at the administrative support that is required to deliver, looking at everything to do with the NPA. Those numbers, by the time they arrive at the Department of Justice, they would have taken care of all those needs, because partly... *Oops*, my apology.

COMMISSIONER KGOMO: No, I think Ms Baiteng is magnetic.

MS RANGATA: I am enjoying the attention when she looks at me, Commissioner, so I even forget that she should not be speaking to
10 me. Sorry about that, I apologise, we apologise.

MS SINDANE: All right, so because, remember, I had indicated that National Treasury provides us with the guidelines of what needs to go into the budget. So we all have the guidelines, so we then use those guidelines to prepare the numbers that must ultimately then be submitted to National Treasury.

So the NPA, through the CEO, would have engaged internally within the NPA, looking at what the needs are and what is required, and how much of that is required in the short-term, mid-term, and in the long-term, which is generally the principles of
20 budgeting. And only after that, those numbers are then provided, and they are generally not changed.

If there would have been a need for a change, that change would have been communicated to the NPA. But in general, those numbers, those changes will be done if National Treasury, we submit the budget, and National Treasury will say your numbers are too high,

go back, review.

And then we will go back and review, all of us as entities that report to the Department of Justice, as well as the Department itself. So there is no risk that an entity could be cut because the Department wants to have more money. Everyone cuts according to the envelope that they have been given, thank you.

MS RANGATA: Thank you.

COMMISSIONER KGOMO: Sorry, you are not Miss Baitse, you are Ms Rangata.

10 MS RANGATA: Rangata.

COMMISSIONER KGOMO: Rangata, yes.

MS RANGATA: Yes, thank you, Commissioner Kgomo.

COMMISSIONER KGOMO: Sorry.

MS RANGATA: Thank you, I did not even realise that you did not say Ms Rangata, I appreciate it, yes.

COMMISSIONER KGOMO: Thank you.

MS RANGATA: Ms Sindane, you correctly point in your statement that you are also before this commission to share your knowledge, or any information that you might have relating to the TRC cases, and
20 relevant to this very same issue of the office that you are holding as the accounting officer, and being responsible and overseer of the budget, which you will have, obviously, as you have said, that you are working hand-in-hand with the CEO within the NPA.

Would you at any time have been faced or received a request for a consideration for any matters that might need to be

accommodated within your budget that were within the NPA, would you have been, at any given time been aware of any budgetary issues or restrictions that might have required your involvement in relation to the TRC cases?

Maybe just to give you a bit of context. We keep on saying the TRC cases. This commission is sitting today because the NPA have accepted the mandate to deal with the investigation or to oversee and make sure that there is investigation and prosecution of TRC cases.

10 And in accepting that responsibility, the TRC cases were declared priority crimes, as you would have known, and that would have meant an extra financial burden to the Department, as well as to the NPA. Would you recognise the fact that there would have been some recommendation or some budget increase to accommodate this very nature of the priority crimes?

MS SINDANE: Thank you very much. I would definitely recognise that. From a budgeting perspective, there is always obviously a need for a special request if a request could be made legitimately as an example to the budget office, National Treasury, so that is the first
20 thing.

The second, which I think is most important, is that there is never adequate funds to be allocated to all departments and everyone who needs funds from National Treasury. So normally what happens in practice is that National Treasury will ask you to do a virement, which is you move funds according to priority within the envelope that

you had already been given.

So if you receive R15-billion as would have been the case around that time, or 12, or whatever the number was, if you think as the Department you want to prioritise, you need funds for certain things, that would not have been accommodated by that envelope that you were given for the year.

You then re-prioritise within the existing budget that you had already been given and approved to then accommodate the things that you think you need to do, but were not included in the budget, or
10 were not sufficiently accommodated in what was approved by National Treasury.

Now, that is how it works, and I think it is the fairest way of ensuring that once the budget is approved, the national budget is approved and tabled in Parliament, there are no other sources of funds that are going to come from Treasury until the July/August revision period in terms of what, if there are different needs. Then they will only be considered during the revision period.

So there are two budget processes: the one is the first budget that covers you for the whole year, and if there are shortfalls in
20 the budget, or whatever problems are in the budget, then there is an opportunity, another window which happens around July/August, if it still happens around that time. That is when the revision of the budget happens.

Invariably, that revision does not always mean that you will get more funds. Sometimes in the revision you lose funds in some

programs. So some programs will gain, so basically what happens is that they revise what you already have and say you are having this, so we will take from here, we will give there.

So in the final analysis, it is not like it is new money. Yes, you do get a little bit of new money, but as you get it, it gets cut elsewhere because, I mean, Treasury must balance the numbers in the final analysis.

So coming back to the question then, if NPA had requested, first, let me specifically say that there was no specific request that
10 was extraordinary from the Department to provide for the TRC cases, the prosecution of the TRC cases. There was no specific request, that I can recall. Maybe my recollection is not that great, but I cannot recall specifically a request for the prosecution, the funding to prosecute TRC cases.

Now, that is the one thing I want to say. The second related to that, if the NPA would have required additional funding for additional prosecutors, investigators, and whomsoever else, whatsoever else capacity that they would have needed, then that capacity would have had to be accommodated in the budget that was
20 already there for the NPA, and then revised, obviously, during the revision period that I spoke about.

And that is how things work, because it is not as if National Treasury has abundance of money, they do not. So we have to be responsible as the various departments and entities within government to find solutions within what we have already been

allocated. Thank you.

MS RANGATA: Thank you, thank you for that. I think you have exhausted that topic on the budgeting. And am I correct that in your evidence you will make a point that you are not aware of any request out of the ordinary to make provision for any additional work of the NPA that you would have been aware of within the Department?

MS SINDANE: I confirm.

MS RANGATA: Thank you. We then proceed to paragraph 8.6 of your affidavit, where you make the point that you had no involvement
10 on matters, prosecutorial matters within the NPA. And you state just towards the end of that paragraph that:

"Consequently, I, as then DG (Director General), never had discussions with any of the NDPP on the substantive matters relating to the cases to be prosecuted or not prosecuted. The report I received from the CEO of the NPA provided the statistics that went into the ministerial reports, not specified specific cases."

Do you want to speak to that part of your affidavit? And
20 when you do that, you can then explain to the commissioners the process of reporting? And what would you then, how would you interact with the CEO within the NPA and preparation of that report, and what will be contained in your report to the extent that the NPA matters, in particular the TRC cases, if any, can make any way into your report?

MS SINDANE: Thank you very much. Maybe what I can speak to, first before answering the question, is that there were matters relating to the TRC that we saw as a Department we received a lot of feedback on. And those matters were not prosecutorial matters, so they were not cases.

So it would be issues like your exhumations, it would be issues like your reparations, your housing needs and related issues, so those we saw. And you will also see, which I will make available, in all the annual reports of the Department of Justice, we do touch on
10 those responsibilities.

The actual exhumations and related matters were not done by the Department necessarily, nor did the Department have direct oversight over those exhumations. The exhumations were done by the NPA. There was a specific directorate that was responsible for exhumations and related matters. So I just want to clarify so that you do not think I am disowning anything and everything that was done by the NPA, perhaps with the Department of Justice. So there was that relationship.

Where there was no relationship whatsoever in terms of
20 responsibility of the Department of Justice to talk to the NPA was on matters that are being prosecuted, TRC or any other matter for that matter, because that is the sole mandate of the National Director of Public Prosecutions.

So there were no discussions relating to prosecute these cases, do not prosecute these cases, because there was no authority

on me as a person and as a Director General to be engaging in that level of conversation with the National Director of Public Prosecutions. And that never happened, not once, it never happened, and it was not required to happen, so it did not happen.

MS RANGATA: Thank you. And you say that you will provide the annual reporting from 2010, that is from the commencement of your term of office as the DG until 2016 to the commission. And what will we read from those reports relevant to this commission?

10 MS SINDANE: What the commission would read from those annual reports is exactly what I have specified. Matters of exhumations, matters of repatriations of remains from wherever they would have been back to South Africa, events and celebrations that would have taken place. And I think roughly those would be the key matters that would be in the reports.

MS RANGATA: Thank you, thank you very much. I am going to move quicker. We are on paragraph 8.7 of your affidavit. You make a point on paragraph 8.7, you say:

20 "The NPA was independent from the authority of the Director General of the DOJ and CD, which is the Department of Justice and Constitutional Development. This meant that the Director General could not direct or instruct the NDPP on whether to prosecute any person identified by the NPA for prosecution, whether for the TRC cases or any other cases howsoever arising for that

matter."

I think you have already spoken to that.

MS SINDANE: I confirm.

MS RANGATA: Yes. 8.8, you talk about:

"The independence of the NPA as the institution,
meaning that the NDPP reported directly to the
Minister of Justice and Constitutional
Development, and this reporting was direct and
not through the office of the Director General."

10 I just want to get some clarity from you on this specific
paragraph, whether amongst the delegated responsibility or authority
of the Minister, would you have at any time at a strategic level be
delegated to deal with any matters arising from the TRC cases within
the NPA?

MS SINDANE: No, I would not, never was, for this reason. The
responsibility of prosecuting cases vest with the NDPP. The minister
has oversight over the NDPP. The DG and the NDPP just happen to
co-exist, but there was no responsibility of one over the other. So I
never had any responsibility over the NDPP to have communications
20 in relation to the functions of the NDPP. We were collegial, we spoke
about many things, but that is pretty much what it was.

MS RANGATA: Thank you. You make the point in paragraph 8.9 that
you have no knowledge or influence over the decision of the NDPP,
and you also state in 8.10 that:

"The NDPP or any prosecutor who required to

discuss any matters of any prosecutorial nature
did not go through the Director General to discuss
such matters with the Minister of Justice of
Constitutional Development."

I want to take you to paragraph 8.11. You make a point that
within your tenure, there have been one, two, three, four, five different
NDPPs. You have also been fair, you are noting the two acting
NDPP, being Adv Nomgcobo Jiba and advocate or Dr Silas Ramaite.

When one reads this paragraph you shrink and you ask if this
10 would have any impact within the workings, in particular within the
NPA, and how you would have related. Because you have stated
under your evidence that you do build that relationship because you
have to speak to them on certain matters, administrative, budgetary
issues. Would that have an impact in terms of the change of the
office of the NDPP?

MS SINDANE: Yes, I think it would have had an impact in some
areas, a significant impact, because obviously before the NDPP
appreciates fully the relationship between the NPA and the
department, the expectations, the reporting arrangements and all of
20 those things, no sooner do they get to understand that they are
moving, they are living.

So that would have presented challenges, but it also would
have presented, and I am not saying as a matter of fact because this
is not tested anywhere, but it would also have presented an
opportunity for lack of continuity in terms of the conversations that

were taking place. But also in terms of what would have been required by the NPA from the Department of Justice and Constitutional Development, because that turnover is too high by anyone's standards.

One may even argue that perhaps, because some of these people, in fact all of them, were already in the NPA system, perhaps except for Adv Mxolisi Nxasana at the time, all of the remaining ones were already in the system at the time. There is a huge difference, I would argue, between someone who is already in the system, but not
10 acting in that role and not playing that role, and someone who just understands, it changes.

When I was a DDG, I understood what DDG needed to do. I only became aware of what the DG needed to do when I was a DG. So I would argue that even if these people were already in the system, their responsibility, the heightened responsibility of the NDPP would have come at a great learning for them as well, but that is my assertion.

MS RANGATA: Thank you.

MS SINDANE: Thank you.

20 MS RANGATA: Thank you very much. We are now at the conclusion of your evidence, and to do justice to your conclusion, I am going to allow you to read paragraph 8.12, 8.13 and 8.14 concluding your evidence, and in particular on your knowledge or involvement on TRC cases or matters.

MS SINDANE: Thank you:

8.12 I was never in any meetings with any of the above NDPPs and acting NDPPs where a discussion was held with the Minister of Justice and Constitutional Development on specific cases considered for prosecution in general or on the prosecution of TRC cases. If there were discussions on the TRC matters, I am not aware of those discussions, and
10 ought not have been aware of such discussions because I did not have a mandate over prosecutions of cases."

MS RANGATA: 8.13?

MS SINDANE:

"8.13 I am not aware of the discussions or meetings held by the NDPP with the Minister of Justice and Constitutional Development or the outcome of such meetings, as I was not entitled to that
20 information either from the Minister or the NDPP.

MS RANGATA: 8.14?

MS SINDANE:

"8.14 I therefore conclude that I am not aware of any discussions or resolutions taken at

any meeting of the NDPP with the Minister
of Justice and Constitutional Development
on decisions on whether to prosecute
TRC cases."

MS RANGATA: So if one was to ask you in conclusion that the
evidence that has been placed before this commission is that those
allegations that there are or there might be efforts by various
institutions or individuals to stop the investigation or prosecution of
the TRC cases, and one was to ask you about your involvement or
10 knowledge, what would your answer be in short?

MS SINDANE: My answer would be I was never involved. There was
never a reason for me to be involved, and therefore I would say that
information is inaccurate.

MS RANGATA: Thank you.

MS SINDANE: Thank you.

MS RANGATA: Chair, that is the evidence of this witness.

COMMISSIONER GABRIEL: Ms Sindane, who did you replace as
DG? Who was your predecessor in the role?

MS SINDANE: Advocate Menzi Simelane.

20 COMMISSIONER GABRIEL: Okay, thank you.

MS SINDANE: Thank you.

CHAIRPERSON: Ms Moroka, any clarificatory questions?

EXAMINATION BY ADV MOROKA: I believe one, chair. Good
morning. I did say long time no see to you, Ms Sindane. It really
relates to budgets and budget allocations. Would I be correct to say

that all State institutions go into these negotiations to try and get the best deal for themselves? That really is what happens, and Health will do the same, Education will do the same, Justice will do the same, and poor Mr Ngodwana or Nene, or whoever was the Minister of Finance, then tries to satisfy everybody and satisfy nobody. That really is the reality of budget and budget allocations.

MS SINDANE: [No audible reply].

ADV MOROKA: You were asked a question about the fact that the NPA then created a PCLU, which then talks to the need for more
10 budget allocation. Do you remember that question? That it necessarily means there is a capacity need which must then be filled, and you agreed.

MS SINDANE: Yes.

ADV MOROKA: But then you explained, and I wanted to really unpack that explanation, that whether you increase the numbers in your own department or you create a sub-sector in that specific department, the budget must still balance, as it were. And it is not as if, as you said, not ...[intervenes]

MS RANGATA: Sorry to interject, I think you must respond. I see
20 you are shaking your head, so you are not getting onto the record.

MS SINDANE: Thank you, thank you. I confirm that the numbers are what they are, they are what you receive. I think the drill is known, that you plan, by the time you go to National Treasury, invariably you already know what the answer is going to be. You get a percentage increase and you work within that percentage increase.

And invariably that percentage increase is taken by inflation and everything that is associated with that. So at face value it does appear like it is a lot of money that you received, but actually that money is already spoken for, so that is what I was trying to explain.

ADV MOROKA: No, and I perfectly agree with you. I just wanted that clarity to be known, that it is not about what you do in your specific department to create a specific unit that will do specific things. Whatever it is that you create, you must "cut your cloth accordingly".

MS SINDANE: "According to size".

10 ADV MOROKA: Thank you, thank you very much, I agree. No further questions.

CHAIRPERSON: Thank you, Ms Moroka. Mr Lukhele.

EXAMINATION BY ADV LUKHELE: Thank you, chair. Chair, I must say, I appeared together with Ms (Indistinct) online, yesterday. They had trouble speaking because of the audio issues. For now they have not indicated if they have any questions. The only questions maybe I might just have for Ms Sindane is one for clarification purposes. She referred... Ms Sindane, good morning. I am not sure if I ...(intervenes)

20 MS SINDANE: Morning.

ADV LUKHELE: You referred to a report earlier on about 2010 that deals with where it indicates what was spent on exhumation and repatriation. You recall that?

MS SINDANE: Yes.

ADV LUKHELE: I just want to, for clarification purposes, if that report,

does it also indicate TRC matters which were prosecuted or not prosecuted, or it only specifically deals with exhumation and repatriation?

MS SINDANE: Thank you very much. Just to clarify again, the prosecutorial responsibilities the Department would not report on, and therefore, the reports, the annual reports, of the Department would not speak to the prosecution of the TRC cases. It will speak to some areas that the Department would be collaborating with the NPA on, and those matters I have already indicated, your exhumations and
10 related matters, excluding prosecutions.

ADV LUKHELE: Thank you.

MS SINDANE: Thank you.

CHAIRPERSON: Thank you, Mr Lukhele. Do we have anyone online? Thank you, Mr Varney ...[intervenes]

ADV NTAMBELENI: Yes, chair. Yes, chair, this is Ms Ntambeleni. I do not have any questions for this witness.

CHAIRPERSON: Thank you.

ADV MTSHIZANA: Thank you, chair. This is Ms Mtshizana. I do not have any questions for the witness.

20 CHAIRPERSON: Thank you. Mr Varney.

ADV VARNEY: Thank you, chairperson. Chairperson, we have come across four documents in which Ms Sindane is mentioned. Three of them we only received from the evidence leaders on Friday. So this was post the statement that Ms Sindane made. The documents have not been put to her, and she has not had sight of the documents.

So it would be unfair to her to pose questions on those documents. So in the circumstances, we would beg leave to apply to cross-examine this witness and put up those documents. So we undertake to let you have that application in the next two or three days, before the end of this week.

CHAIRPERSON: Okay, okay, fine.

COMMISSIONER KGOMO: Good morning, Ms Sindane.

MS SINDANE: Good morning.

COMMISSIONER KGOMO: Well, I think you were my wife's boss
10 and she gave you some problems. You knew me through her, I was her dependant. Ms Sindane, the CEO of the MPA was not an accounting officer. The DG was the accounting officer, would that be correct?

MS SINDANE: Yes, it is correct.

COMMISSIONER KGOMO: And if there was a need, say for personnel or personnel capacity or resources or the tools of trade, would the CEO or the office of the NPA direct their request to Treasury through the DG?

MS SINDANE: Yes, whether the CEO was there or not, yes, their
20 request would have been directed through the Office of the DG to the National Treasury, and that is what was happening. The requests that would have been received would have been treated in that fashion.

COMMISSIONER KGOMO: And I suppose through your experience and your position, would you also make some inputs or even assist them where you think that their motivation was maybe lacking?

MS SINDANE: In the final analysis there is one budget, it just goes to different corners within the Justice family. So practically what that means is that if there were needs of the NPA that were extraordinary, then that conversation would happen. And from that conversation, then perhaps the Department would pull back in terms of what the Department needs would be, which did not happen in this particular case, I am just speaking hypothetically.

That would then happen, but to my recollection, and I would argue that I think it is as best as I can give to this commission, I do
10 not recall any extraordinary needs that would have come to the DG for budgeting purposes.

COMMISSIONER KGOMO: And if some austerity measures are imposed, as it has happened, I cannot recall the years, where departments may even be requested to not spend their entire allocation, how does the DG and the NPA deal with that, or how would they deal with that? Because the money of the NPA, I assume would be ring-fenced, not so?

MS SINDANE: Yes. So, practically, the Department has its own allocation, the NPA has its own allocation. If there is a saving in one,
20 it does not necessarily mean that saving goes to the next, in other words, between the two of the entities. At least between the budget allocation process, where the minister takes the budget to parliament, the Minister of Finance, that is, takes it to parliament.

Once that process has ended, it is closed, you cannot now move funds. Any moving of funds has to be sanctioned by National

Treasury, and so we would have had to seek permission to move funds from one side to the next and *vice versa*.

The only time that you then can, if there were concessions to be made, you can make concessions, and there were many concessions made, it would be during the mid-term review. During that period, then funds can be moved, but in general they do not move significantly, because it is already funds that are spoken to.

It is already responsibilities that are being undertaken already, because by then it is mid-year. So you have to decide do
10 you stop a cot from being built and then allocate funds elsewhere, or whatever other responsibilities that those funds would have been earmarked for, so that is basically how it works.

COMMISSIONER KGOMO: Okay. Just on the question also of reparations, the TRC Commission also recommended reparations, and let me ask you this way first. How did you deal with the issue of reparations, you referred to it?

MS SINDANE: Thank you. Sometimes when we say this in English and we say reparations, it sounds like it was a lot of money. Actually it was not, to be honest, it was only R30 000 that was regarded as
20 reparations in financial terms, so it was not a lot of money, so that is the first thing.

So the reparations would have gone through a process where TRC victims would have applied and provided the information that is specified. If that information was provided, those reparations would have been made directly to those TRC victims, so that is

basically all that there was to it.

There were issues of housing and similar issues. So in terms of matters pertaining to housing, to the best of my knowledge, there was no funding allocated for the housing needs of the TRC victims necessarily.

So ultimately, when the Department of Military Veterans was established, which was much later from the time of the TRC to then, one of the expectations sometimes discussed was that they would also look out for providing accommodation. Whether that happened, I
10 would not know, I do not recall any during my tenure. But then the Department was new, it had not started functioning in a manner that was expected. So maybe it has happened since, I would not know that, thank you.

COMMISSIONER KGOMO: Yes, and as part of the Terms of Reference, which is also why the Calata group asked for, and the President obliged, we are supposed to look at constitutional compensation. It seems we may "hit a brick wall", but I would want your comment on us, the commission looking at constitutional reparation, any comments, if you can?

20 MS SINDANE: Maybe let me say I would not be able to comment because I do not understand what constitutional reparations mean. So it will be venturing to guess on something that I am not qualified to speak about, simply because I just do not understand it.

COMMISSIONER KGOMO: Fair enough, fair enough, it is before the court, we will see what happens. Thank you, Chair.

COMMISSIONER GABRIEL: Ms Sindane, thank you for your evidence. I just want to ask you, you have made it perfectly clear in your affidavit that you had no role to play in the prosecutorial decision-making process if the NPA, and you have also made it clear in your affidavit that that reporting was directly to the Minister. Now, during your tenure, which was six years, did you ever sit on a committee of Directors General?

MS SINDANE: Yes, I was in the committees of Directors General, and I chaired the JCPS cluster probably from the time I started until, 10 maybe for four years, if I were to estimate, and I am thinking from memory now.

COMMISSIONER GABRIEL: Okay, and were the TRC cases discussed there?

MS SINDANE: No.

COMMISSIONER GABRIEL: Not during your tenure?

MS SINDANE: No, not during my tenure.

COMMISSIONER GABRIEL: Okay, thank you.

CHAIRPERSON: Ms Rangata, following from the clarificatory questions, any re-examination?

20 MS RANGATA: No re-examination, chair, thank you.

CHAIRPERSON: Thank you. Ms Sindane, thank you very much for having come to give evidence before this commission. As you have heard, there is an intimation that there will be an application for your cross-examination. We expect you to return to this commission for such cross-examination on a date that will be arranged with you. For

now you are excused as a witness.

MS SINDANE: Thank you.

NO FURTHER QUESTIONS

CHAIRPERSON: Mr Semenya.

ADV SEMENYA: Chair, I see it is 11 o'clock. I otherwise would have asked to stand down so that we have the next witness virtually prepared for it.

CHAIRPERSON: Yes. We will take a tea adjournment until 11:20.

ADV SEMENYA: Thank you, chair.

10 INQUIRY ADJOURNS

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

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➤Names of which the spelling was not known were transcribed phonetically.

➤Grammar errors were transcribed verbatim.

➤Some words/phrases were inaudible due to the following reasons:

1. Some speakers were not placed close enough to the microphone.



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