

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

HELD AT:

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

BEFORE:

COMMISSIONERS:

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

EVIDENCE LEADERS:

Adv Ishmael Semanya (SC)
Adv Vas Soni (SC)
Adv Fana Nalane (SC)
Adv Nompumelelo Seme
Ms Baitseng Rangata

REPRESENTATIVES

Adv KD Moroka (SC) – DoJ representative
Adv Matseleng Lekoane (DOJ representative)
Adv Anisa Kessery-DOJ Representative
Adv Varney (SC) – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Ms Lamiah Casoo-The Calata Group
Adv Motlalepule Rantho (for SAPS)
Adv B Lukhele-NPA Representative

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INQUIRY RESUMES

CHAIRPERSON: Adv Moroka?

ADV MOROKA: Thank you, Chair. We call, Chair, Ms Kalayvani Pillay.

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

MS PILLAY: Under oath.

CHAIRPERSON: Yes. Do you swear that the evidence you will give before this commission will be the truth, the whole truth and nothing
10 but the truth, if so, raise your right hand and say so help me God?

MS PILLAY: So help me God.

KALAYVANI PILLAY: (duly sworn states)

CHAIRPERSON: Thank you. Ms Moroka?

ADV MOROKA: Chair, before we start off with the evidence of Ms Pillay, I thought we should put it on record, place it on record, and I have already explained to my learned friends that I am not going to be dealing with her supplementary affidavit. It is a supplementary affidavit that has been filed that has to do with documents.

CHAIRPERSON: Yes.

20 ADV MOROKA: I am not going to be dealing with that. I am dealing with her main evidence and the reason why she is here.

CHAIRPERSON: Yes.

ADV MOROKA: Thank you.

CHAIRPERSON: She is your witness and you lead her as you wish.

ADV MOROKA: Well, she has been asked other things that I have

no interest in getting involved in, Chair.

CHAIRPERSON: Yes.

ADV MOROKA: Thank you.

EXAMINATION BY ADV MOROKA: Ms Pillay, there is a document in front of you titled, "Affidavit Kalayvani Pillay".

MS PILLAY: Yes.

ADV MOROKA: You answer to the commission and at page 2379 appears a signature. I assume that is your signature.

MS PILLAY: That is correct, Chair.

10 ADV MOROKA: You confirm the contents of this affidavit.

MS PILLAY: I do.

ADV MOROKA: More specifically, paragraph 2 thereof.

MS PILLAY: That is correct, Chair.

ADV MOROKA: Could you tell this honourable commission why you are here? You set it out at paragraph 3.

MS PILLAY: Yes, Chair. I received a letter from the commission dated 18 June 2026 where I was requested to assist the commission and to furnish the commission with an affidavit that deals with my knowledge of relevant events and matters. In particular, the
20 commission requested that I set out the following. My role and responsibilities as Director-General of the department ...[intervenes]

ADV MOROKA: If you could, that letter is encapsulated in paragraphs 3.1, 3.2 and 3.3 to 3.4. Is that correct?

MS PILLAY: Yes, that is correct ...[intervenes]

ADV MOROKA: Thank you.

MS PILLAY: that is what the letter required.

ADV MOROKA: And then if you can explain paragraph 4 then of what you were requested to do.

MS PILLAY: Yes, I was requested to submit the affidavit by no later than 25 June 2026 and unfortunately I was unable to file this affidavit timeously due to certain family commitments I had in KwaZulu-Natal. And I humbly apologise, Chair, for the delay in filing this affidavit.

ADV MOROKA: Now, can we then go to who you are? And we find that in paragraphs 7 and 8 where you, in paragraph 6 you tell us of
10 your present position, but if you could just give us your brief legal background and where you started and where you are now.

MS PILLAY: Yes, I am currently the acting Director-General but my substantive position in the department is that of a Deputy Director-General Legislative Development and Legal Services, which I occupied since 2013. And while I am acting as a Director-General, Mr Stephen Ralekwa has been appointed to act as Deputy Director-General Legislative Development and Legal Services. I have qualifications of a BA Law, LLB and a Masters in Law and a Masters in Management, Public and Development Management, also
20 ...[intervenes]

ADV MOROKA: What was the LLM in?

MS PILLAY: It was a general LLM but specifically on human rights courses. I am an admitted attorney having been admitted in 1995. I left practice in 2000 and I joined the department on 1 November and I have worked in various capacities in the department including Chief

Director Legal Services from 2010 to 2013. But when I entered the department I was employed as a Senior Legal Administration Officer and thereafter as a Principal Legal Administration Officer in the Branch Legislative Development.

ADV MOROKA: Can you please explain the content, as it were, of your position as a Principal Legal Administration Officer?

MS PILLAY: The Branch Legislative Development deals with the development of legislation and in the position of Principal Legal Administration Officer, I was responsible for the development of
10 secondary legislation or subordinate legislation, which arises out of the principal legislation that is drafted. But at some stage the section was streamlined so that all of us did principle, sorry primary and secondary legislations. It was basically research, drafting of legislation and promoting legislation in Parliament.

ADV MOROKA: And you are now substantively the Deputy Director-General of Legislative Development and Legal Services, which is essentially the head of whatever it is that you were doing in the past.

MS PILLAY: That is correct, Chair.

ADV MOROKA: And over and above all of that you are the Master of
20 the Court.

MS PILLAY: Yes, I was requested to stand in as the acting Chief Master following certain changes in the department and that section deals with the administration of estates.

ADV MOROKA: Is it fair to say you are overloaded?

MS PILLAY: Yes, it is fair to say that I have a lot of work but we

manage it with the people who are supporting me in my space but it is a very difficult task having both positions.

ADV MOROKA: If we then move on to paragraph 11, currently what are you doing?

MS PILLAY: In paragraph 11, I refer to a period between 2017 and 2019 where I acted as the Deputy Director-General, meaning the head of the branch Constitutional Development. And I think that is relevant because there is a unit called the TRC unit that resorts under the branch Constitutional Development.

10 And in paragraph 11, the unit that I am referring to is responsible for the implementation of TRC recommendations in respect of Parliament-approved reparations. And this unit facilitated the payment of individual reparations, educational assistance and we are currently dealing with housing reparations as well.

 And I think the link between my work in legislative development, legislative development drafts the regulations that would give effect to the implementation of those recommendations and that empowers the payment of reparations from the President's Fund. I know I might be getting ahead of myself but the President's
20 Fund is a fund that is made up of donations that were paid into the President's Fund for the payment of the reparations and it is a ring-fenced budget.

 It is only for reparations in terms of the TRC approved recommendations and it is reported as its own report separately from the department and the department does not utilise any money from

those funds for its operations or to even run the TRC unit. It is solely for the purpose of reparations and we cannot implement any reparations without regulations empowering it. So that is the linkage between the two units.

ADV MOROKA: You forgot to mention also in your affidavit that between the periods 2010 and 2012, you were the Chief Litigation Officer in the department. You acted as Chief Litigation Officer.

MS PILLAY: Yes, it coincided with my appointment as Chief Director of Legal Services, which resided in the branch Chief Litigation Office.

10 ADV MOROKA: We depended on you for briefs.

MS PILLAY: You depended on the State Attorney for briefs, yes.

ADV MOROKA: So if we move on to paragraph 14, can you read that into the record and then explain 14, 15 and 16?

MS PILLAY: So paragraph 14 speaks to my role as Director-General. I have no direct role in the prosecution of TRC cases. The NPA operates independently under the National Director of Public Prosecutions, the NDPP. My role as Director-General is responsibilities under financial administration support and not investigative or prosecutorial oversight.

20 In terms of section 36(3)(a) of the National Prosecuting Authority Act, the Director-General shall, subject to the Public Finance Management Act or the PFMA, be charged with the responsibility of accounting for state monies received or paid out for or on account of the prosecuting authority. As part of this responsibility, the budget of the NPA is part of the vote of the

Department of Justice and this includes submission of reports and budgets to the National Treasury, Chair.

ADV MOROKA: And in terms of reporting to Parliament, how does that work?

MS PILLAY: So on occasion we are called by Parliament to address matters of the budget and on these occasions I am supported by the NPA officials themselves. And in this regard we report on the performance of the NPA against the budget that has been allocated and we report on what is known as the Annual Performance Plan and
10 the Strategic Plan of the Department.

We give Parliament an overview of how we are going to spend the money and then during the quarterly reporting process and the annual reporting process we give an account of how we spent the money.

ADV MOROKA: Can I refer you to a document that you were given, I think this morning, under Flag No 2? I think the document has been circulated, Chair. And this really is an illustration. The heading is, "TRC Matters Update, including payments to beneficiaries". And if you go to the second page, we see that your name is mentioned
20 there. Can you read that into the record?

MS PILLAY: Okay, Chair.

"Ms Kalayvani Pillay, Deputy Director-General
Legislative Development and Law Reform at the
DOJ&CD, told the committee that the
Department's TRC unit was focused on

implementing the TRC recommendations. The unit is working closely with the Legislative Development Branch, also in the department, on developing the draft regulations for housing."

It says "housing people", I think it is incorrect.

"but for housing identified as TRC victims and implementing the recommendations approved by Parliament."

10 ADV MOROKA: You are then under paragraph... if you turn over that page, again, there is name mentioned at paragraph 5 of 9. It is the third paragraph from the bottom. It is page 5 of 9. It is when you turn over that, you are reading at page 2 of 9, now I am referring you to page 5 of 9.

MS PILLAY: Should I read that into the record?

ADV MOROKA: Please, "As Ms Pillay explained..."

MS PILLAY:

20 "Ms Pillay explained how the line items are accounted for. The department has a ring-fenced allocation called the President's Fund, which is made of money donated for the TRC reparations. The money is accounted for and has its own audited financial statements."

ADV MOROKA: Thank you. If you can then go back to your affidavit. You have explained, maybe you should reiterate at paragraph 20 your relationship with the NPA as the Accounting

Officer for the Department. Paragraph 20 of your affidavit.

MS PILLAY: Correct.

ADV MOROKA: If you could read that into the record.

MS PILLAY:

10 "In my capacity as the acting, (sorry, it should not
 be the acting accounting officer, it should be the
 Accounting Officer), of the DOJ&CD, I bear
 certain responsibilities in relation to the financial
 administration of the NPA and in that regard I
 render such support as is appropriate in assisting
 the NPA in its engagements before Parliament."

ADV MOROKA: Paragraph 21.

MS PILLAY:

 "As the acting Director-General, I possess no
 statutory authority of oversight in respect of the
 investigative or prosecutorial functions of the NPA
 in relation to any matter under its consideration,
 including TRC cases."

20 ADV MOROKA: And you mentioned at 22 that you really have no
 powers or mandate to monitor, coordinate, and investigate anything
 that has to do with prosecutions.

MS PILLAY: That is correct, Chair.

ADV MOROKA: At 23, you talk about the reporting lines and you
explain that the NDPP reports directly to the Minister of Justice.

MS PILLAY: Yes.

"The NDPP reports directly to the Minister of Justice concerning affairs and activities of the NPA. I am not present at those meetings, nor do I attend meetings convened for the purpose of such reporting."

ADV MOROKA: You never get invited?

MS PILLAY: No, I do not get invited and I believe that there is a section in the NPA Act that requires that degree of reporting or that level of reporting because the Minister exercises overall
10 responsibility.

ADV MOROKA: Can I then refer you to another document that was handed over to you this morning and has been circulated. It is at the top of that document pack that you have been given and it is a memo to Minister Lamola from Adv S Batohi. Do you see that?

MS PILLAY: I do, Chair.

ADV MOROKA: And at the back of that ...[intervenes]

CHAIRPERSON: Ms Moroka, we do not have these annexures.

ADV MOROKA: You were given this morning, Chair.

CHAIRPERSON: Yes.

20 ADV MOROKA: My apologies.

CHAIRPERSON: Yes.

ADV MOROKA: It is titled, to Mr Lamola and its subject matter, "Briefing on TRC cases", Chair. At the back of that briefing note is your signature, if I am looking at the right document. Am I looking at the right document? Are you there, Ms Pillay? At page 15. There is

your name there. Ms K Pillay, acting Director-General. And if you look at the signature by Adv Batohi, it is dated 2 December 2020. I think this is during the stint where you said, that short stint of seven months when you were acting Director-General. Am I correct?

MS PILLAY: Yes, correct, Chair. That is annexure 1 ne you are referring to, Adv Moroka. And it is not my signature that appears there, it is my name that appears as a person that this memo would have been routed to.

ADV MOROKA: So how does this happen? Or how did it happen?

10 MS PILLAY: Well, there was a period of time when, well, not a period of time, there is a process where the NDPP would write directly to Minister Lamola, and in relation to this was a briefing on TRC cases. She would have routed it to me, but the memo does not reach me necessarily. It goes directly to Minister Lamola, and I did not sign this document.

And so there were other matters as well where she would have written to Minister Lamola. For instance, I recall that there were memos that she had written on legislative amendments, which went directly to Minister Lamola, and then he forwarded the same to me
20 because legislation fell within my responsibility at the time.

And then we would have dealt with the matter and briefed him and given him advice on how we take the matter forward, Chair. But in this matter, this memo did not reach me because it did not, for some reason, it never got to me.

CHAIRPERSON: So you are not aware of this memo?

MS PILLAY: I am not aware of this memo. I saw it for the first time today, Chair.

ADV MOROKA: Chair pleases. So am I correct in asserting that you receive documentation for signature of whatever nature is a DG, that has financial implications, over and including the fact that you feed us every day here in this commission?

MS PILLAY: That is correct, Chair.

ADV MOROKA: So if I were to refer you to the last document in the pack that you were given this morning, how did it come about that this
10 memo came to you? And it is a memo to Ms Kubayi, and it is a request for approval for the engagement of services in terms of section 38(1) of the National Prosecuting Act. If, as I understand it, you have nothing to do with prosecution issues.

MS PILLAY: Yes, Chair. In this regard, section 38 of the NPA Act provides that:

20 "The Director of Public Prosecutions, if you look at page 1 of Annexure 3, it sets out what section 38 is. The Minister of Justice and the NDPP, on behalf of the State, may engage under agreement in writing persons having suitable qualifications and experience to perform services in specific cases and or other related services."

So in this regard, this is where the NPA would seek further capacity or expertise from counsel outside of the NPA. And because that has financial implications, that would be routed to me. So if there is a

concern that there is no funding, then I would be in a position to raise those concerns under this paragraph.

ADV MOROKA: But it would seem in this instance you were in agreement that the two legal representatives be appointed to assist the NPA.

MS PILLAY: Correct, yes.

ADV MOROKA: Thank you. If I could draw your attention... Well, is there anything else about your affidavit that you want to explain to the commission that I have not led you through or taken you through?

10 Possibly more importantly, the terms of reference talk to interference. They talk to delay of prosecution. They talk to stopping, not delay, stopping of prosecutions. Do you have anything to say to this commission that could be helpful to this commission? If you have nothing or you know nothing, please say so.

MS PILLAY: Chair, I have nothing further to add apart from what I have already stated in my affidavit and as per what I have said in my evidence today.

ADV MOROKA: Do you by any chance know about the Rodriguez case?

20 MS PILLAY: I have heard of the case, yes.

ADV MOROKA: Were you involved at all?

MS PILLAY: No, I was not involved.

ADV MOROKA: Were you involved in the Timol inquest?

MS PILLAY: No.

ADV MOROKA: And in 2007, there was a special dispensation of

pardons policy that was set aside. Were you involved in that instance?

MS PILLAY: I do recall the special dispensation pardon process, Chair, but I became involved when I was appointed as Chief Director, so I was not involved in that case itself. I was required to set out the process to implement that judgment, which required consultation with families and victims, *et cetera*, because that is what the judgment required us to do.

10 So we set up that process, and then the process also included the finalisation of the recommendations of that special dispensation pardon. And so it took a long time to finalise, but we eventually did finalise them. And we also, I think in the period that I was there, there was a lot of engagement with civil society, was concerned that in the process of consultation, how would we go about it, how would we make it as inclusive as possible.

And I think there was a difference of opinion about whether we restart a TRC hearing for those special dispensations, or we conclude it in other more applicable ways that would satisfy the court judgment and that would be appropriate in the circumstances. And I think that
20 is what caused a little bit of delay in getting legal opinions on how to conclude and conclude the matter in a rational basis so that we could give advice to the President on those special dispensation pardons.

ADV MOROKA: I wish to lead you on to something that has not been part of your affidavit, but we do wish to be of assistance to the court. You have been asked for a number of documents, and some of them

were classified secret, some of them were classified confidential. I am assuming some of them would have been extremely secret, or whatever words that are used in that respect.

And just to explain to the commission how that system works, because I also want to refer you to a case. I am told by Mr Varney that he was involved in that case, and I had to boast to him that in my other case, I relied on his arguments in that case. So I would want us to talk about MISS, if you want to start off.

MS PILLAY: Yes, thank you, Chair. There is a process in
10 government with regard to the nature of how we deal with documents. There are four levels of how we would classify a document. One is restricted, one is confidential, the other is secret, the other is top secret. And all officials in the department must be vetted. And your level of your employment, or the nature of the work that you do, or the office that you occupy.

So you could be an admin officer in the office of the ministry, but you would be required to have top secret clearance. All Directors-General and Deputy Directors-General must have top secret clearance. So there is a linkage between the nature of the document
20 and the level of the restriction.

So unfortunately, I do not have the MISS document in front of me to say, but I do know that top secret documents cannot be emailed, it cannot be copied, and it must always be locked away. And the same applies to lock it away in a safe, so it is not accessible to anyone and not left lying on your desk.

And the same applies to secret documents. Under confidential documents, I believe the person needs to get permission to then photocopy or release it, but they remain classified under those terms. That is to protect information, but also to protect instances where you want to, where the release of information may harm others. So it has many purposes, but it is an official policy of government that we follow to this day.

ADV MOROKA: And can I then, I think we did give you a copy of the Moseneke judgment as part of the constitutional court. And I will refer
10 you to paragraph 49. And my apologies, I have been referred to the name of the case, Chair. It is *Independent Newspapers v Minister of Intelligence*. And for those who are interested, Chair, Mr Varney was representing the Minister of Intelligence and others. And I refer you to paragraph 49. If you could read from page 31 where it says, "The Minister draws attention" for the record, please.

CHAIRPERSON: Paragraph?

ADV MOROKA: Paragraph 49, Chair.

CHAIRPERSON: My paragraph 49 says, "I describe briefly".

ADV MOROKA: Yes, Chair, I did not want to start there. That is why
20 I said paragraph 49, but on page 31, the third line says, "The Minister draws attention".

CHAIRPERSON: Yes.

ADV MOROKA: Thank you.

MS PILLAY: Okay, on page, from page 31 it says:

"The Minister draws attention to the National

Information Security Policy, known as Minimum Information Security Standards, or MISS, which was adopted by Cabinet on 4 December 1998. It applies to all Departments of State that handle classified information in the national interest. It provides for measures to protect classified information and empowers the Minister to protect information by classifying it as restricted or confidential or secret or top secret. In addition, national legislation and regulations prohibit the disclosure of certain classified information."

Thank you, Chair.

ADV MOROKA: And if a document is classified as secret, what then happens? Who declassifies the document?

MS PILLAY: The person who wrote the document. That is what the MISS requires. If you wrote the document, only you can declassify it.

ADV MOROKA: So there are some documents before this commission that you had declassified?

MS PILLAY: Correct, yes.

20 ADV MOROKA: And there was nothing sinister, if I might put it to you, in having classified those documents as secret?

MS PILLAY: No, not at all.

ADV MOROKA: Chair, having argued with my junior that is the evidence of Ms Pillay.

CHAIRPERSON: Yes. Thank you. Ms Rantho?

ADV RANTHO: Commissioners, there are not any questions from our side. Thank you.

CHAIRPERSON: Thank you. Mr Lukhele?

ADV LUKHELE: No questions. Thank you.

CHAIRPERSON: Nothing. Okay. People online?

FEMALE SPEAKERS: No questions, Chair.

CHAIRPERSON: Thank you. Mr Varney?

ADV VARNEY: Thank you, Chair. Just a couple of questions by way of clarification.

10 COMMISSIONER KGOMO: Couple means two in English.

ADV VARNEY: Commissioner, I should be schooled in the fact that I need to be more precise with my words. I retract the couple and just say a few.

COMMISSIONER KGOMO: Thank you.

ADV VARNEY: Ms Pillay, I can see from your statement that you wear multiple hats and that you have a very full plate. So, on behalf of the families, we thank you for taking the time to come and assist us today. I do want to start actually by going to your supplementary affidavit, which deals with the attempts by the Department of Justice

20 to recover documents for the commission.

And, Commissioners, this is in the supplementary affidavit. And I am referring in particular to the account that Ms Pillay provides from paragraph 9 onwards. And that is on page 2381AE. And there, Ms Pillay, you confirm that, in fact, documents sought had already been provided to the Commission on 3 July 2026. That is in

paragraph 9. You also indicate that you have resent those. And then you give a comprehensive account of the attempts by your department to recover the records of the Ginwala Commission of Inquiry.

And I can see from this account, Ms Pillay that your department has, in fact, acted with diligence and you have taken expeditious steps to recover these documents. And we thank you for those efforts. Can I ask, when the documents were provided to the commission on 3 July 2026, do you know in what form those
10 documents were provided? So, for example, was it hard copy as well as electronic copies?

MS PILLAY: I can talk to the process that we follow, Chair. When the documents are located, and I believe this was a batch where we had to declassify certain documents, the documents are copied and we deliver them to the State Attorney, who then delivers it to the commission.

I am not sure if it was emailed or otherwise, but that is a process we follow, and the documents are delivered by the State Attorney.

20 ADV VARNEY: Since they were delivered by the State Attorney, I assume you would not know who received them on the side of the Commission?

MS PILLAY: No, I am not aware of that.

ADV VARNEY: Okay, thank you. And if we can turn to your statement, your first statement, and if I can draw your attention to

paragraphs 11 and 12, where you speak about, as acting Deputy DG in Constitutional Development between 2017 and 2019, a unit was established to help implement the TRC recommendations in respect of the reparations. And in your evidence-in-chief, you mentioned that a President's fund had been established. It was ring-fenced. Am I correct in saying that there is some R2 billion sitting in that fund which is unspent?

MS PILLAY: May I respond, Chair? I do not have the exact amount that is currently sitting in the fund, but there is an account of the
10 amount of money. What had happened was this account bears interest, and the department does not spend that interest or utilise that interest for any of its other activities.

So the fund has grown, and it is very likely that whatever money is remaining there is arising out of the original investment together with the interest. But we have spent substantial amounts on educational assistance over the years. The numbers that are there are more than 300 million. That is Basic Education and Higher Education. We have put a number of children through school and universities.

20 And then we have the 30 000 individual reparation where we made significant payments, and we recently started a new project to ask those who had not come forward to claim those individual reparations to do come forward, and we are making those payments. We are currently making payments in respect of the housing reparations, and those were recently signed off regulations, and I

believe at the last stage that I checked we were at about 48 million that was paid out of this, but that process is still on-going.

So there are amounts that are spent, and I think that information can be readily available in terms of how much we have actually spent. The President Fund actually provides an annual financial statement every year, and that is public information as well.

ADV VARNEY: Thank you. Some of the families who are parties to this commission, as well as other organisations who have also made submissions to the Commissioners have expressed some
10 consternation that after some decades after the establishment of the President's Fund, it does have a substantial sum of money, apparently close to 2 billion, that remains unspent in the face of overwhelming needs that the victims and families have. Do you have a reaction to that?

MS PILLAY: I think I would like to correct, Chair that it is not monies unspent. It is monies that are being spent against approved regulations. There is one set of regulations that we have not finalised as yet, and that is on community rehabilitation, and those regulations are currently being drafted. It has also been a difficult process to get
20 them drafted due to the nature of how we intended community rehabilitation to operate, so the monies are being spent.

In fact, we continue to spend on the basic education and higher education funding, and as I also indicated, we are continuing to spend on the individual reparations for those who do come forward, but that, I must say, is a small number of people. But whatever is

remaining in the fund will go towards further rehabilitation because there is the aspect of the housing and community rehabilitation still to come. That will take care of a substantial amount of the funding.

ADV VARNEY: Thank you. Speaking of individual reparations, another concern that the families and the victims have expressed is that it is confined to a very small number of people, just those on the victim's list of the TRC, and of those traced, I believe we are talking of a number between 16 000 and 18 000, and they have asked for certain reforms so that there can be further registration of victims who
10 did not make it to the TRC. Is that under consideration?

ADV MOROKA: Chair, I did not want to object because I think these are important issues. Firstly, they are not part of your terms of reference. Secondly, it is not clarification questions.

CHAIRPERSON: Yes, Mr Varney?

ADV VARNEY: I take the point, Chair, although the witness did raise individual reparations herself.

CHAIRPERSON: Yes.

COMMISSIONER KGOMO: At paragraph 11:

20 "This unit facilitated the payment of individual reparations, educational assistance, and currently deals with reparations, including housing reparations."

I just fasten on that, and I am not so sure how far one can go with that. Particularly, my interest would be because, as I have pointed out to some witnesses that it seems in terms of the terms of reference

with constitutional, what is it, compensation ...[intervenes]

ADV VARNEY: Constitutional damages, Commissioner.

COMMISSIONER KGOMO: Damages, we may hit a brick wall. So, I thought, Chair, because you have not ruled yet, I thought the witness could help.

CHAIRPERSON: Yes, Mr Varney, let me understand the ambit of the clarificatory question that you seek from the witness.

ADV VARNEY: Thank you, Chair. On the question of individual reparations, she mentioned that this was quite a small amount.

10 CHAIRPERSON: Yes.

ADV VARNEY: And I do not dispute that because the numbers are small. I simply wanted to know whether her department was considering the request to adjust the approach to also include victims who fall outside of the TRC list.

CHAIRPERSON: Yes.

ADV VARNEY: Who were not able to make it to the TRC for various reasons.

CHAIRPERSON: Yes. Yes, may proceed. Ms Pillay?

MS PILLAY: Thank you, Chair.

20 CHAIRPERSON: Do you propose enlarging the list?

MS PILLAY: Not that I am aware of, Chair. It is a policy issue, and it would require the reopening of the TRC process and reopening it to the entire country to identify those people who may want to come forward and to undergo that process again. So, at this stage, I am not aware of any discussion around reopening it.

ADV VARNEY: Thank you, DG. My learned friend asked you about various cases, including the Rodriguez matter and the Timol matter. If I may raise one other matter that was on-going while you were acting Director-General between August 2020 and February 2021, and that was the case of the Cradock 4. The wives of the Cradock 4 launched an application to compel the SAPS to finalise their investigation and to compel the NPA to make a decision in that matter. It was launched a week or two before you assumed your post as acting DG. Did that case come across your desk?

10 MS PILLAY: No, no, Chair, it did not.

ADV VARNEY: Thank you. Then, finally, if we can turn to the PMG minutes of the Justice and Constitutional Development Portfolio Committee meeting on 17 September 2024, this was a meeting that you attended and you already responded to some questions. I want to read to you a passage from the meeting summary on the first page. It is the fourth paragraph. So I will just wait for you to get there. It reads as follows.

20 "While the committee acknowledged the enormous complexity and difficulty associated with investigating and prosecuting TRC cases, it was concerned by the slow progress made in processing matters which had delayed the families of those who suffered gross human rights violations obtaining some sort of closure."

Do you recall that discussion at that meeting?

MS PILLAY: There was a discussion in Parliament at the time where the NPA was required to report, Chair, to Parliament on progress it was making on prosecution of TRC cases.

ADV VARNEY: Do you recall whether you were aware of any follow-up that took place thereafter?

MS PILLAY: Yes, the NPA was called to Parliament on other occasions, but I am unable to give you specifics on that because that would have been between the Portfolio Committee and the NPA itself.

ADV VARNEY: Thank you, Chairperson. No further questions?

10 CHAIRPERSON: Ms Moroka, any re-examination.

MS RANGATA: Sorry, Chair, if I may.

CHAIRPERSON: Oh, sorry about that, Ms Rangata.

MS RANGATA: Sorry for rudely interrupting, Chair.

CHAIRPERSON: Yes, yes, thank you, Ms Rangata, for drawing my attention to your presence.

MS RANGATA: Thank you, Chair.

COMMISSIONER KGOMO: Your microphones, you will get some help.

MS RANGATA: Good afternoon, Ms Pillay.

20 MS PILLAY: Good afternoon.

MS RANGATA: Chair, the evidence leaders do not have specifically questions to ask. The reason why I would like to place on record, I raised the hand, is to put into context the supplementary affidavit of Ms Pillay for the proper record of this commission and how it arose. Ms Pillay was, as the Accounting Officer of the Department of Justice,

was served with a *subpoena*, or a summons, to provide the commission with various documentation. Ms Pillay, you confirm that you have received that *subpoena* to provide the commission with the relevant documents that are important for the work of this commission. Am I right?

MS PILLAY: I believe that was a *subpoena* that was a sheriff tried to serve on me personally. I was not in the office and it was served on the DG's office, which they brought to my attention immediately, yes.

MS RANGATA: Thank you. I must also commend you because you
10 have been in touch with the evidence leaders in discussing the availability and the difficulties that you have been having in locating the documents. And, Chair, she deals with that part of the *subpoena* in paragraph 6 of this supplementary affidavit.

CHAIRPERSON: Yes.

MS RANGATA: Maybe before I start, I must just recognise and request you to confirm that a document that appears on page 2381AA, ending on page 2381AI, is the supplementary affidavit that you filed with this commission. Can you find it?

MS PILLAY: Yes.

20 COMMISSIONER KGOMO: 2381AA.

MS RANGATA: Yes, yes, Commissioner Kgomo, it starts at 2381AA and it ends on 381AI. And your signature appears on page 2381AI. That is your signature. You confirm the contents of this affidavit to be true and correct?

MS PILLAY: Yes, correct. That is my signature and I confirm the

contents of that affidavit.

MS RANGATA: Yes. Thank you very much for that. I would like to deal in particular with paragraph 9 of your affidavit, of your supplementary affidavit, where you make the point that:

"Some of the documents that have been requested, in particular as contained in the *subpoena*, has already been provided to this commission on the 3 July 2026."

10 You state that in your supplementary affidavit and you have also confirmed now in your evidence when you have been questioned under clarificatory questions. You still confirm that?

MS PILLAY: Yes, I confirm that.

MS RANGATA: I think for progress, Chair, is to make a note that the commission does not have record of the documents that were submitted on the 3 July. Instead, the commission has a record of documents furnished on the 8 July 2026.

CHAIRPERSON: Are you asking the witness to comment on that?

20 MS RANGATA: Yes, Chair, she can comment on that. Do you think perhaps you could have made a mistake or maybe there was confusion with the dates?

ADV MOROKA: Chair, I think we are going to be very careful how we deal with this issue. There is a document dispute that I did not want to get into. We submit differently from what the evidence leaders are submitting. I am not particularly sure why we are going into this, whether it is relevant.

From our perspective, these documents were delivered. From the evidence leader's perspective, these documents were not delivered. Whether anything turns on this or not, I am not particularly sure.

CHAIRPERSON: Yes, but we are interested in getting the response from the witness. Yes, Ms Pillay?

MS PILLAY: Chair, as indicated earlier, the process that we follow is that when we locate the documents, we prepare a file, which is a hard copy of the documents, we deliver it to the State Attorney, and we
10 request the State Attorney to deliver the documents, and these documents were sent to the State Attorney because there was a process where I had to declassify certain documents, which I did, and that formed the first bundle of documents that we would have delivered to the State Attorney to deliver to the Commission. And that is as far as I can take the matter insofar as the documents, but from our side, we supplied the documents.

CHAIRPERSON: On the 3 July?

MS PILLAY: Yes.

COMMISSIONER GABRIEL: To the State Attorney.

20 MS PILLAY: Yes.

ADV MOROKA: And to the commission that is the point that we are making.

CHAIRPERSON: Yes, Ms Rangata?

MS RANGATA: Chair, the point has been made. I think we are not going to take it any further. I must state, Chair, that for the purpose of

this commission to do its work, it is important and we rely on your kindness and your hard work, Ms Pillay. You are not under attack, hence you did not receive a Rule 33. And the frustration that this commission is facing is various departments, not only the Department of Justice, is the lack of cooperation from various institutions in terms of providing us with documents. These documents are not only required for this commission, various parties ...[intervenes]

ADV MOROKA: Is there a question there, Chair. Because you either ask a question where you are ...[intervenes]

10 COMMISSIONER KGOMO: Well, Ms Moroka, Ms Moroka ...[intervenes]

ADV MOROKA: Chair, no, can I finish?

COMMISSIONER KGOMO: Ms Moroka, no, I am saying ...[intervenes]

ADV MOROKA: It is an objection, Chair. It is an objection. It is either this witness is alleging unlawful, unsupportive conduct on the part of Ms Pillay. If she says that, she must say it in no uncertain terms. She makes a speech about non-cooperation. Is she saying Ms Pillay has been uncooperative?

20 CHAIRPERSON: That is my objection. Ms Moroka, I think Ms Rangata is still addressing the commission.

COMMISSIONER KGOMO: Yeah.

CHAIRPERSON: She has not even concluded her statement or question. Ms Rangata?

MS RANGATA: Thank you for that, Chair. I think for progress, we

just need to respect each other as colleagues. And I would prefer that we maintain that. I appreciate that. Ms Pillay, I was going to refer you to paragraph 27 of your affidavit, where you make a very good point. You say:

"The Department is actively searching for the documents that are outstanding for the record of the Ginwala Commission. Documents that have been located have already been provided to the Commission."

10 I commend you for that, and I would still say that we are looking forward to receiving some of the documents that are outstanding, and thank you very much. Chair, that is all I needed to put on record.

CHAIRPERSON: Thank you. Ms Moroka, any re-examination?

ADV MOROKA: There is no re-examination.

NO RE-EXAMINATION BY ADV MOROKA

CHAIRPERSON: Thank you.

ADV MOROKA: For the record is that Ms Pillay has really indeed done all her best. She was seen sweeping that room to find documents, and to then make a statement that starts off by saying we
20 do not have cooperation from others is not fair.

CHAIRPERSON: Ms Moroka, that is not re-examination. I have actually asked you, do you have any re-examination, and you have indicated that there is no re-examination to be conducted on the witness. Ms Pillay, we thank you for having come before this commission to give your evidence. You are now excused as a

witness.

MS PILLAY: Thank you, Chair and Commissioners. Thank you very much.

NO FURTHER QUESTIONS

CHAIRPERSON: Yes. We will adjourn these proceedings until 20 past 2 for the next witness to give evidence.

ADV VARNEY: As it pleases, Chair.

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:

JUDICIAL COMMISSION OF INQUIRY INTO TRC

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