

**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: Good morning. Oh, good day.

ADV SEMENYA: Chair, we beg leave to call the evidence of Mr Skosana, and my learned colleague Nalane will deal with his evidence.

CHAIRPERSON: Thank you. Adv Skosana, good day.

ADV SKOSANA: Good day, chairperson and commissioners.

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

10 ADV SKOSANA: Under oath, chairperson.

CHAIRPERSON: Yes. 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".

ADV SKOSANA: So help me, God.

CHAIRPERSON: Thank you. Mr Nalane.

EXAMINATION BY ADV NALANE: Thank you, chair, commissioners. Adv Skosana, you have given two affidavits in assistance to this commission, correct?

ADV SKOSANA: Yes, Mr Nalane.

20 ADV NALANE: If you look at page 2364 of the bundle before you. Are you there?

ADV SKOSANA: Page 2?

ADV NALANE: 2364, sorry.

ADV SKOSANA: Yes, commissioners.

ADV NALANE: And the affidavit starts at 2364 and ends at 2369.

ADV SKOSANA: Yes.

ADV NALANE: And there is a signature where it says deponent, correct?

ADV SKOSANA: Yes.

ADV NALANE: Who signature is that?

ADV SKOSANA: It is my signature, chairperson.

ADV NALANE: So this is your affidavit?

ADV SKOSANA: It is my affidavit.

ADV NALANE: Then the second affidavit is called Supplementary
10 Affidavit. It appears on 23718.

ADV SKOSANA: Yes, commissioners.

ADV NALANE: On page 2371B there is a signature there under deponent.

ADV SKOSANA: I can see it.

ADV NALANE: Is that your signature?

ADV SKOSANA: It is my signature.

ADV NALANE: So you confirm this affidavit as well?

ADV SKOSANA: I confirm this affidavit, chairperson.

ADV NALANE: Thank you. Mr Skosana, fortunately, the area which
20 the commissions have called you is very narrow. You have been asked to provide certain information which may assist the commission in executing its functions on the terms of reference of the commission. You are aware of that?

ADV SKOSANA: I am aware of that.

ADV NALANE: And the reason you have been called is that at some point in your public/professional life you acted as the Director General of the Department of Justice, correct?

ADV SKOSANA: Yes, correct, chairperson, for a period of nine months.

ADV NALANE: Yes. And the reason why we need your assistance is because the Terms of Reference deals with, amongst other, the National Prosecuting Authority, which falls under the Department of Justice, correct?

10 ADV SKOSANA: Yes, correct.

ADV NALANE: And so insofar as there may be complaints about TRC cases, the so-called "Truth Reconciliation Commission" cases, and insofar as the NPA may be involved or affected, this is why we need your assistance, to the extent that you acted as a DG at some point. Do you understand that?

ADV SKOSANA: Well understood, chairperson.

ADV NALANE: So there is nothing that you are accused of having done underhand, illegal or otherwise.

ADV SKOSANA: Yes.

20 ADV NALANE: You are simply being asked to provide information to the extent that you have any.

ADV SKOSANA: Which I am willing to do to the extent that it can assist the commission, thanks, chair.

ADV NALANE: Before we deal with the substance of your evidence, just tell the commission briefly your professional academic

background? Starting with what you say in paragraph 1 of your affidavit, you can read and talk to that.

ADV SKOSANA: Thanks, chairperson and commissioners. Let me first apologise for my hoarse voice. I am recovering from flu, and that is because of the different temperatures in the place I have been, et cetera. So I apologise for the voice that continues to cause that persistent cough also.

Let me start by saying that I have had quite a long service in the public service, illustrious service of just over 36 years. And during
10 that period, I have served in different portfolios across, or positions across the Department. Currently I am a member of the South African Law Reform Commission, and also enrolled in the legal practice as a practitioner in the advocates' roll.

And basically, that is what I do, and provide advice in terms of policy and governance-related aspects. My entirety or my long period in the government have been in the policy space, judicial policy development space.

And over this period, obviously, I have contributed to quite a number of interventions that I intended or aimed at transforming the
20 legal system and the judiciary to where it is today. And we have left behind for others to take the bait and forward in terms of that journey.

I hold three degrees from the University of South Africa, a BJuris, a BA masters and a doctorate, an LLD from the University of Fort Hare. And my study at Fort Hare has got its own angle, in that before 2024 I have been a dropout of Fort Hare.

I went to UNISA, which basically even went via, I tried to went TEF Law, but it did not work out, but I ended in UNISA, who accepted me, and I obtained three legal degrees. And it was always this inclination that I failed myself by being a dropout at Fort Hare. So I wrote to Fort Hare to do a doctorate and ...[intervenes]

COMMISSIONER KGOMO: Please face the chair, Mr Skosana, face the chair.

ADV SKOSANA: Yes, face the chair, yes. So I went back to Fort Hare to complete my legal studies, and that is where I am today,
10 and I am very pleased to have been of, and hope I would have helped this commission, thank you.

ADV NALANE: Thank you. And in paragraph 3 of your affidavit, on 2365 you deal with the various ...(intervenes)

ADV SKOSANA: 235?

ADV NALANE: 2365.

ADV SKOSANA: Yes.

ADV NALANE: You deal with the various positions that you held in the public service in South Africa, and you say prior to 1 February 2022 you served in various positions in the public service
20 in the Republic under the Department of Justice and Constitutional Development, and retired from the public service after you had served 34 years in various capacities.

ADV SKOSANA: That is correct, chairperson.

ADV NALANE: Ja, and the nation owes you gratitude for your long service, especially in the legal sector reformation. You also say the

last position that you held was that of Deputy Director for Court Administration. Is that correct?

ADV SKOSANA: Yes, and also to state that I held two substantive positions: it was Deputy Director General for Court Services, Court Administration, it was initially Court Services, which was changed to Court Administration during the time of Director General Direct operational costs Mashabane. I also served as the head of Policy Development, and I held those two positions concurrently from 1 May 2016 until I retired.

10 Prior to appointment as Deputy Director General: of Court Services, I was the head of Policy Development, which I had occupied back then from 2009, after the head of Policy Development, then the late Adv Bonisiwe Makhene was transferred to the special advisor to the then President Jacob Zuma. And then I took over that position of the head of Policy until I was appointed as DDG in 2016, during the tenure of Minister Michael Masuta then, thank you.

ADV NALANE: You then deal with the period that might be relevant to your evidence today. You say at paragraph 4 that you were appointed by the then Minister of Justice and Correctional Services,
20 Mr Ronald Lamola, as Acting Director General of the DOJ CD with effect from 1 May 2020. Is that correct?

ADV SKOSANA: Yes, I needed to correct that time period. When I was preparing the affidavit, I was relying on the information that I obtained from the Department, and, of course, obviously they would

have to check in the archives. So the 1 May 2020 was basically the extension of my appointment for a second term.

I was appointed Acting DG from October 2019 until the end of April, six months. And that period was basically intended to allow a process of, one, to get the DG of that time, who was already earmarked to be an ambassador in the Netherlands, And then it would then lead to a vacancy in the position, and it would then be filled by a new DG.

Hence, I was appointed for six months with the hope that
10 those processes would be facilitated in the six-month session. By the end of April, it was still not complete in terms of the appointment process, and I think the Minister extended my appointment with a further three months. Hence, I stated that my acting stint in the Department has been nine months as the Acting Director General.

ADV NALANE: Yes, thank you. And, fortunately, this Commission has heard from a number of incumbents who held the position of DG before your time. The Commission heard from Ms Sindane, who was DG from 2010 to 2016. Do you recall that?

ADV SKOSANA: Yes, correct, and then I had the opportunity, chair,
20 to serve with all the DGs that have been before here, and some of the ministers.

ADV NALANE: And then she was followed by Ambassador Madonsela from 2016 to 2020.

ADV SKOSANA: Yes, that is correct, chair.

ADV NALANE: And as you say in your affidavit at paragraph 4, that Ambassador Madonsela was then earmarked to be appointed as ambassador to the Netherlands.

ADV SKOSANA: That is correct, chairperson.

ADV NALANE: And during that time when there was transition, you were appointed as Acting Director General.

ADV SKOSANA: That is correct, chairperson.

ADV NALANE: And when did that end?

ADV SKOSANA: The first appointment was, as I have indicated, was
10 for six months, until the end of April, but since the process of recruitment and appointing the successor to DG Mashabane had not been completed, my term was extended, and which ran until the end of July, I think.

ADV NALANE: And then Advocate Mashabane took over as DG from 2021 until 2026.

ADV SKOSANA: Yes, Chair.

ADV NALANE: You then went back to your substantive position.

ADV SKOSANA: That is correct, chairperson.

ADV NALANE: And in between, before Advocate Mashabane
20 became DG, Ms Pillay, Adv Pillay also acted for some time as DG.

ADV SKOSANA: Yes.

ADV NALANE: Do you recollect the period that she acted?

ADV SKOSANA: Yes, she acted, in fact, from July, and it was during the height of COVID-19. I had to take leave of absence to attend to health challenges at home, and that is why I interrupted my acting

appointment, and Minister Lamola appointed the Acting DG (indistinct) in that period. When I returned, I continued to serve under Ms Pillay.

ADV NALANE: Thank you. And then coming to the substance of why you have been called today, the commissioners fortunately heard from all these DGs about how the position of DG works in terms of the Public Service Act, and what role it also fulfils in terms of the National Prosecuting Authority Act, so we do not need to repeat that. But you emphasise at paragraph 11.1, page 2367, in respect of your role you
10 fulfilled as Acting Director General. And that seems to be the theme that all the DGs seem to emphasise. And if you can read 11.1 and talk to it if you wish?

ADV SKOSANA: 11.1, Chairperson, reads as follows:

"In respect of my role and responsibilities as Acting Director General of DOJ and CD, I respectfully state that I had no role whatsoever in relation to the TRC cases."

ADV NALANE: And then you expand on that, as to why that would have been so, given the nature of your functions within the Ministry at
20 11.2. Can you read that into the record? You talk about the support which you gave in the day-to-day operations of the Ministry concerning TRC matters. Read that and talk to it?

ADV SKOSANA: Okay, thanks, Mr Nalane. Through you, chairperson:

"As regards the manner in which I supported the

Ministry in its day-to-day operations concerning TRC matters, I wish to state that the NPA falls under the executive management and direction of the National Director of Public Prosecution (NDPP) in terms of its operations. The National Prosecuting Authority has exclusive autonomy with regard to its prosecutorial functions, with the DOJ's mandate solely limited to administrative matters and financial accountability."

10 ADV NALANE: That is in terms of law?

ADV SKOSANA: That is in terms of law.

ADV NALANE: Then you also expand with that on paragraph 11.3.

You say:

"During your tenure as Acting DG, you had no mandate or authority in respect of the investigative or prosecutorial functions of the South African Police Service or the NPA in relation to TRC cases."

Is that correct?

20 ADV SKOSANA: That is correct, chairperson.

ADV NALANE: And that will be in line with the functions of a DG in the Ministry, is that so?

ADV SKOSANA: That is so, chairperson.

ADV NALANE: And also the legislative functions of the NPA and the Director of Public Prosecutions.

ADV SKOSANA: That is correct, chairperson.

ADV NALANE: You then state:

"I was not involved in any management, administrative, coordination, monitoring, advisory, investigative, prosecutorial or decision-making functions pertaining to the work of the NPA."

You can expand further and read what you say: "I wish to further state that"?

ADV SKOSANA:

10 "I wish to further state that the outbreak of COVID-19 pandemic occurred during my tenure as the Acting Director General of the Department. As such, my day-to-day role was largely consumed by the role the Director General of the Security Cluster played in advising the Coronavirus Council and Cabinet on preventative measures to curb the spread of the virus."

ADV NALANE: And in 11.4 you talk about the reporting lines between the NDPP and the Minister of Justice and Correctional Services
20 concerning the activities and affairs of the NPA. Can you read that and talk to that, if you will, in 11.4?

ADV SKOSANA: Through you, chairperson:

"The NDPP reported directly to the Minister of Justice and Correctional Services concerning the activities and affairs of the NPA. To the best of

my recollection, I did not attend any meetings for purposes of such reporting. My only engagement with the NPA during my tenure as Acting Director General was in relation to a consultation with regard to directions that the Minister was empowered to publish in order to curb the spread of COVID-19 at that time."

ADV NALANE: And this emphasises a theme, that the DG position plays administrative and financial support.

10 ADV SKOSANA: That is correct, chairperson.

ADV NALANE: Then at 12 you deal with the cases that you may have come across. You deal with Rodrigues judgment. Can you explain, can you read that paragraph and explain how this came about, and in what capacity? You say it was in your capacity as Deputy Chief State Law Advisor when you came across to Rodrigues's case, correct?

ADV SKOSANA: That is correct.

ADV NALANE: Not in your capacity as Acting Director General?

ADV SKOSANA: That is correct, chairperson.

20 ADV NALANE: Please explain. You may read the paragraph.

ADV SKOSANA:

"The only matter relating to TRC cases that was referred to me closer to my retirement by the Ministry was in my capacity as Deputy Chief State Law Advisor, and related to Rodrigues's judgment

of the Supreme Court of Appeal (SCA) The judgment made reference to alleged political interference in TRC cases.

I prepared a draft memorandum in which I recommended that the Minister consider appointing an investigative panel comprising of a retired judge and senior counsel to undertake the investigation contemplated in the SCA judgment. The draft memorandum I prepared became part
10 of the matters I handed over to my successor when I retired from the Department."

And just to also elaborate that in terms of the DG's office, et cetera. The Minister has a role of policy and legislative mandate over and above the role of the DG in the Department, and that role the Minister exercises in direct engagement with the Judiciary, with the NPA, with the Legal Aid South Africa, et cetera.

So the request that came to me in relation to this judgment was basically based on my support around the policy role of the Minister. I read the judgment and prepared that submission, it is for
20 that reason that it did not emanate from the DG's office but from the Ministry. Because the Minister would basically seek advice from the relevant component within the Department in relation to specific matters, the matter of security, IT, et cetera.

The Minister would then approach the relevant entity within the department, and I was approached in relation to this matter, which

was very late, just before my retirement. And I started with submission, et cetera, but could not process further, until it was taken over by my successor after I left chair.

ADV NALANE: In fact, you elaborate more on that memorandum in regard to the Rodrigues matter in your supplementary affidavit at page 2371A. Do you have that?

ADV SKOSANA: Yes, that is correct, chairperson.

ADV NALANE: In particular at paragraph 4 on page 2371B.

ADV SKOSANA: Yes.

10 ADV NALANE: You state that you do not annex the memorandum to your main affidavit:

"The (indistinct) memorandum had neither been considered or approved by the Director General at the time or the Minister."

ADV SKOSANA: That is correct, chairperson.

ADV NALANE: And then that memorandum is attached to your affidavit appearing on page 2371D, almost until the end of 2371K.

ADV SKOSANA: That is correct, chairperson.

20 ADV NALANE: But that memo was prepared by you purely in an advisory position.

ADV SKOSANA: Yes, chairperson.

ADV NALANE: And at that time you were Deputy Chief State Law Advisor.

ADV SKOSANA: Yes, in addition to Deputy Chief Court Services.

ADV NALANE: And that advice involved around whether and how to constitute a panel to look into the issues raised in the Rodrigues matter.

ADV SKOSANA: That is correct, chairperson.

ADV NALANE: And that was the sum total of your involvement?

ADV SKOSANA: Yes, that is correct, chairperson.

ADV NALANE: And then you then deal with your concluding matters at paragraph 13. Please read that paragraph on page 2361? Are you there?

10 ADV SKOSANA: Yes, chair. Paragraph 13?

ADV NALANE: Paragraph 13, yes.

ADV SKOSANA: Thanks, through you, chairperson:

20 "Other than what I have stated under paragraph 12 above, I am not in possession of, nor do I exercise control over any other information capable of assisting this Honourable Commission concerning decisions to proceed with, suspend, discontinue, or otherwise affect the investigation or prosecution of TRC cases during the period of my tenure as Acting Director General, or by virtue of my other positions I held in the Department. Matters of that nature fell outside the purview of my duties and responsibilities as Acting Director General or in my other official capacity."

ADV NALANE: And as I have said to you in the beginning, we are just covering all angles, possible angles, talking to all persons who may have played one or other role in the hierarchy of government about these matters, so nothing untoward suggested that you did. Are you saying even in that capacity that you held, there is no information that you can give to this commission to assist with discharging its mandate?

ADV SKOSANA: That is correct, chairperson, there is no any other information, other than what I have stated in the two affidavits.

10 ADV NALANE: Thank you. Chair, those are the questions for the witness.

CHAIRPERSON: Thank you, Mr Nalane. Ms Rantho, or Ms Moroka, sorry.

ADV MOROKA: No questions on behalf of the Minister, chair.

CHAIRPERSON: Yes.

ADV MOROKA: No questions on behalf of the Minister.

CHAIRPERSON: No questions?

ADV MOROKA: No.

CHAIRPERSON: Thank you. Ms Rantho.

20 ADV RANTHO: No questions on behalf of the SAPS, thank you, commissioners.

CHAIRPERSON: Adv Lukhele.

ADV LUKHELE: No questions on behalf of the NPA.

CHAIRPERSON: Yes. Online?

FEMALE SPEAKER: No questions, chair, thank you.

CHAIRPERSON: Thank you. Online?

MALE SPEAKER: No questions, Chair, thank you.

CHAIRPERSON: Thank you. Mr Varney.

ADV VARNEY: Chair, just a few questions by way of clarification.

CHAIRPERSON: Yes.

EXAMINATION BY ADV VARNEY: Adv Skosana, thanks for coming to the commission, even in the condition that you are in, we are grateful.

ADV SKOSANA: Thank you, chair.

- 10 ADV VARNEY: I just want to raise with you a couple of developments that took place while you were Acting Director General of the Department of Justice between May 2020 and July 2021. We have minutes of a Justice and Correctional Services Portfolio Committee meeting that took place on the 11 September 2019.

And according to the minutes, you attended that meeting in your then capacity as Deputy Director General of Court Services. Now, the committee chair made the following comment in that meeting around the discussion of the unfinished implementation of the TRC report. He stated that:

- 20 "21 Years had passed since the report's finalisation, and the process could not continue for more than 20 years..." (intervenes)

ADV LEKOANE: Sorry to interrupt, Chair. Can we maybe get a reference so that we can follow, of the minutes?

ADV VARNEY: Yes, chair, that was circulated by the secretary a couple of days back, and I understand that a copy was forwarded to Mr Skosana.

CHAIRPERSON: Yes.

ADV VARNEY: Mr Skosana ...(intervenes)

Adv LEKOANE: Can we get a reference, please, so that we can follow it in the document? We do not have it in front of us. So there are many portfolio minutes, we do not know where to find it.

ADV VARNEY: If you have that copy, in the minutes it is page 8, and
10 it is the fourth paragraph on page 8. I will just read it again for those who do not have it in front of them. The Chairperson referred to the TRC report and said:

"It has been 21 years since the finalisation of the report. There could not be a process that lasts more than 20 years. By the end of this term, this has to be completed."

You were at the meeting. Do you recall the discussion on that aspect?

ADV SKOSANA: I have been handed over the file, and I am trying to
20 find out where exactly ...(intervenes)

ADV VARNEY: My colleague is going to assist you finding it.

ADV SKOSANA: Okay, I have noted the paragraph, chairperson.

ADV VARNEY: Do you recall any discussion that happened on that point, and whether there was any follow-up?

ADV SKOSANA: The first question is whether I attended the meeting. I see immediately after the paragraph my name appears, which Adv Skosana reply that the contract of (indistinct), whatever. So I was at the meeting, and to the extent that the matter is reflected in the minutes, it was discussed, yes.

ADV VARNEY: Yes, and to be fair to you, that was not your portfolio at the time. You were in charge of Court Services.

ADV SKOSANA: Yes, in fact, if you go down on that report, my report on the portfolio committee related to two portfolios I hold. I held at the
10 time, one, Court Services: DDG, and two, head of Policy. That is why I even reported the issues of the PIC Commission, the State Capture Commission, because from a policy perspective, I played that role of facilitating the commission in terms of work and their timeframes and resourcing, et cetera.

ADV VARNEY: Thank you. Mr Skosana, when you answer, if I can ask you to face the chairperson and the commissioner?

ADV SKOSANA: Yes.

ADV VARNEY: Thank you.

ADV SKOSANA: Thank you.

20 ADV VARNEY: Just in terms of the period when you were Acting Director General of the Department of Justice between May 2020 and July 2021. Between June 2020 and May of 2021, the former TRC commissioners and various families and victims wrote to the president requesting a commission of inquiry into the alleged interference of the

TRC cases. So this was shortly after the Rodrigues matter had been finalised. Did you ever come across that correspondence?

ADV SKOSANA: No, chairperson.

ADV VARNEY: The Presidency did respond to the correspondence in May of 2021, and said that the matter was referred to the Department of Justice for further attention and reply. That did not come to your attention, did it?

ADV SKOSANA: That would have been after my acting stint. I would not have known about it.

10 ADV VARNEY: Yes, indeed. Although that was May 2021, and you departed in July of 2021.

ADV SKOSANA: Yes, from my substantive positions, so I would not be a recipient of any referral of matters from the president's department.

ADV VARNEY: And while we are on correspondence, in September of 2020, while you were Acting Director General, the Foundation for Human Rights submitted a detailed proposal to various parties, including the Minister of Justice. And the Foundation proposed setting up a dedicated prosecution-led capacity, comprising
20 prosecutors and investigators to deal with the TRC cases. Do you recall dealing with such correspondence?

ADV SKOSANA: No.

ADV VARNEY: Thank you.

ADV SKOSANA: To the best of my recollection, chairperson, I never came, those discussions and correspondence never reached my side.

ADV VARNEY: If we can turn to paragraph 12 of your statement.

Here you talk about the only matter relating to TRC cases that was referred to me closer to my retirement by the Ministry was in my capacity as Deputy Chief State Law Advisor. You have read the Rodrigues judgment of the SCA. The judgment made reference to alleged political interference in the TRC cases. I just want to clarify with you, we have taken a look at the judgment, and the SCA did not use the word "alleged" political interference. Commissioners, I can refer you to the judgment of the SCA. It is included in that bundle. I

10 have read page 103, and SCA deals with the question of interference at paragraphs 26 to 30. So, for example, at paragraph 27 the SCA says... I will just wait for the sirens:

"The full court rightly recommended a proper investigation into these issues by the NDPP."

Then at paragraph 30:

"The ineluctable conclusion in all the circumstances that political decisions were taken by the executive, which may have affected the investigation and prosecution of the TRC cases."

20 Do you accept that the SCA did not refer to "alleged" interference?

ADV SKOSANA: Yes ...[intervenes]

ADV LEKOANE: Chair, sorry, chair, may I object? This is skirting on cross-examination. The judgment says what it says. So my learned

colleague must put a question that arises from the evidence-in-chief that has been put, with due respect.

CHAIRPERSON: Yes, Mr Varney.

ADV VARNEY: Chair, with respect, that is just precisely what I have done. I am referring to paragraph 12 in his statement, where he says:

"The SCA talked about the 'alleged' political interference."

CHAIRPERSON: Ja.

10 ADV VARNEY: And it did not use the word "alleged", it referred to the interference.

CHAIRPERSON: I will allow it.

ADV VARNEY: Thank you, chair. And the witness has already answered the question.

CHAIRPERSON: Yes.

ADV SKOSANA: Through you, chair, I can comment.

CHAIRPERSON: Yes.

20 ADV SKOSANA: In my memorandum I am not (indistinct) the judgment, I do not even read the judgment. The inquiry from the ministry was that there was a judgment from the SCA which pointed to these aspects, and it is a choice of words I used in my memorandum to use "alleged". And I used "alleged" because the SCA says there must be an investigation. I did not put it as a fact.

It says there must be something that must happen to investigate the issues, et cetera. So within my own interpretation, the issue that needs to be investigated still needs to be confirmed as a

statement of fact, et cetera. That is why I used that word, but it is basically my choice of the word. I did not quote what the SCA said, that is why I even put that word under inverted commas, it is basically how I articulated it in my memorandum.

ADV VARNEY: Yes, and thank you for that clarification. You made reference to a memorandum, although, unfortunately, we do not have that memorandum, and perhaps the evidence leaders can share it with us. So we were relying on your paragraph 12 in your statement.

And, indeed, the SCA did support the call for an investigation
10 by the full bench to see whether there had been any violations of the NPA Act. But the NPA was quite firm in those paragraphs that that interference had taken place, and, indeed, the NPA had admitted that it took place in those proceedings.

COMMISSIONER GARBRIEL: Mr Varney, just to assist you, in paragraph 6 of Adv Skosana's supplementary affidavit he makes reference to paragraph 36 of Minister Lamola's affidavit, which he says is attached as an annexure to that affidavit.

ADV VARNEY: Thanks for pointing that out, Commissioner Gabriel. I am told that we do not have that supplementary affidavit, but I am not
20 going to suggest that we pause to take a look at it. We will take a look at it in due course. Mr Skosana, also in paragraph 12 you said you asked, you recommended that the Minister consider appointing an investigative panel, comprising a retired judge and a senior counsel to undertake the investigation referred to in the SCA

judgment. Did you have in mind an internal inquiry, or was it a commission of inquiry?

ADV SKOSANA: No, a commission of inquiry. I established the Commissions Act, and that power lies with the president, not the minister.

ADV VARNEY: Right. Although, appointing a judge or a retired judge to an internal inquiry also has its own constitutional implications.

ADV SKOSANA: No, those are two different processes, and it was basically advice given to, chair, it was advice given to a minister.

10 One, at that point of drafting a memorandum, et cetera, there was no contemplate of a commission of inquiry, because a commission of inquiry follows a straight process which is legislated by the Commissions of Inquiry Act of 1947, read with the Constitution.

And in this particular instance the SCA did not mention commission of inquiry, but basically mentioned the need to investigate certain aspects, et cetera. And I had at that point deemed that it could be one of the viable options for the Minister to use section 7 of the Judge's Remunerations Act of 2001. And basically assign a process that would be led by a judge to look into the factual
20 circumstances pertaining to what the judgment has raised, and that is normally being done, and those are not commissions of inquiry.

They are basically factual investigations informed by (indistinct) circumstances. In the very same way that we have appointed retired Justice O'Regan to investigate matters pertaining to the COVID-19 data cases, at that time the former Chief Justice,

whatever, who used that section. So it is not a commission of inquiry; it is basically a mechanism provided for in law that the Minister can use to establish facts, on the basis of which there can then be a clear guidance on how to move forward, chair.

ADV VARNEY: Thank you. You are aware that at least part of your recommendation was implemented, I believe a year or two later, when Ntsebeza SC, Adv Ntsebeza SC was appointed by the NPA to ...(intervenes)

ADV LEKOANE: Sorry, Chair, my learned friend is giving evidence.

10 He must ask first the witness whether he is aware of it. The witness has not thus far said that he is aware of it.

ADV VARNEY: With respect, chair, I did indeed ask whether he was aware that part of his recommendation had been implemented.

CHAIRPERSON: Yes.

ADV VARNEY: So were you aware that part of your recommendation had been implemented with the appointment of Dumisa Ntsebeza SC by the NPA to look into these matters?

ADV SKOSANA: No, I am not aware.

ADV VARNEY: Okay.

20 ADV SKOSANA: After I left Justice, I focused on separate aspects completely, I closed my shop on the DOJ, chair.

ADV VARNEY: And if we can just move on to July 2021. Now, this was the last month when you were acting DG of Justice. In that month the Cradock 4 families launched an application against the NPA and SAPS, as well as the Minister of Justice, to compel a

decision in the Cradock 4 case. Did that ever come across your desk?

ADV SKOSANA: Chairperson, I have corrected at the beginning when led by Mr Nalane, the sequence of the dates of my acting stint, and in 2021 I was not the acting DG, and I have corrected that. My acting appointment started in October 2019 to July 2020, so by 2021 I was back in my substantive position in the Department.

ADV VARNEY: I just want to confirm those dates. So your acting stint started October 2019?

10 ADV SKOSANA: Yes, chairperson.

ADV VARNEY: And completed when?

ADV SKOSANA: July 2020.

ADV VARNEY: July 2020?

ADV SKOSANA: Yes.

ADV VARNEY: Okay, and in that case you would have been gone for approximately a year already, so I will not proceed with that question. No further questions, chairperson.

CHAIRPERSON: Thank you, Mr Varney. Mr Nalane.

ADV NALANE: No other examination, chair.

20 CHAIRPERSON: Thank you. Adv Skosana, we thank you for having come before this commission to give evidence. You are now excused as a witness.

ADV SKOSANA: Thank you, chairperson, and I wish the commission the best of luck in its endeavour to find the truth out of the TRC cases. Thank you, chairperson.

CHAIRPERSON: Thank you. These proceedings are adjourned until tomorrow at 11 o'clock, 11 o'clock.

INQUIRY ADJOURNS UNTIL 31 JULY 2026

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. Speakers not placed close enough to the microphone.



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