

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

HELD AT:

Sci-Bono Discovery Centre, corner Mirriam Makeba & Helen Joseph Street,
Newtown, Johannesburg

BEFORE:

The Honourable Justice Sisi Khampepe (Judge RTD) – Chairperson

The Honourable Justice Frans Diale Kgomo (Judge President RTD)

Adv Andrea Gabriel (SC)

SUPPLEMENTARY AFFIDAVIT: KALAYVANI PILLAY

I, the undersigned,

KALAYVANI PILLAY,

do hereby make oath and say:

1. I am currently the Acting Director-General in the Department of Justice and Constitutional Development (“**the Department**”). I previously deposed to an

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affidavit which was filed with the *Judicial Commission of Inquiry to inquire into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases* (“**the Commission**”), dated 3 July 2026 wherein I responded to the Commission’s request for assistance and dealt with my knowledge of relevant events and matters.

2. This supplementary affidavit is in response to a further request received from the Commission dated 22 July 2026 relating to documents and information (numbered as items 2.1 to 2.9) that have been requested from the Department, and which are outstanding.
3. I am requested to explain to the Commission the reason why some of the documents and information are not available or have not been provided to the Commission and to address this in a supplementary affidavit. This affidavit has been prepared in compliance with the Commission’s request.
4. Save where the contrary appears from the context or is expressly stated, the facts deposed to herein are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.

THE COMMISSION’S REQUESTS AND THE DOCUMENTS SUBMITTED

5. On 2 July 2026, the Commission issued a subpoena *duces tecum* requesting that I produce the following documents which were identified in Annexure A to the subpoena:

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- "1. List of documents in the form of Memoranda, Minutes and Correspondence in the possession of the Director General in the Department of Justice attached here as annexure "DOJ3".*
 - 2. The complete record of the Ginwala Commission of Inquiry into the fitness to hold office of Advocate Vusi Pikoli.*
 - 3. The National Prosecution [sic] Authority's memorandum from the Acting National Director of Public Prosecution, Advocate Ramaite, addressed to Minister of Justice Bridgitte Mabandla, dated 14 December 2004*
 - 4. Minister [sic] of JCPS Cluster meetings in respect of TRC cases from 1998 to 2017."*
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6. The subpoena was served at the offices of the Department on 3 July 2026. I was required to produce the documents to the Commission on 13 July 2026.
 7. The Department was at that stage already in the process of collating the documents for submission to the Commission and a significant number of documents were filed with the Commission on 3 July 2026. Notably, the documents provided to the Commission, were not limited to those that had been identified by the Department and reflected in annexure DOJ3.

DOCUMENTS IDENTIFIED BY THE DEPARTMENT IN ANNEXURE DOJ3

8. In its letter dated 22 July 2026, the Commission referred to documents which the Department identified in annexure DOJ3. According to the Commission's

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letter, the following documents from annexure DOJ3 remain outstanding:

- 8.1 Item 2.1: Minister M. Masutha's answering affidavit and annexures to the Notice of Motion and founding affidavit in the matter between Joao Rodrigues and the National Directors of Public Prosecutions and South Africa, the Minister of Justice and Correctional Services and Minister of Police;
- 8.2 Item 2.2. Briefing notes on TRC cases - 03 December 2020;
- 8.3 Item 2.3. Representations: Rev Frank Chikane – 24 January 2008;
- 8.4 Item 2.4: Memorandum on process of dealing with TRC cases by the NPA with three undated attachments without details of the authors thereof –22 December 2007;
- 8.5 Item 2.5: Progress report regarding the task team on the TRC cases – 26 July 2007;
- 8.6 Item 2.6: Progress report regarding the task team on the TRC cases – 30 July 2007; and
- 8.7 Item 2.7: Letter from SAPS to Adv AR Ackerman on investigation of TRC cases.

9. I am advised by officials within the Department who were tasked with collating the documents requested by the Commission and submitting them to the State Attorney for filing, that the abovementioned documents were in fact filed with the Commission on 3 July 2026. Furthermore, in respect of item 2.1, these documents are available in the public domain.
10. Nevertheless, given the Commission's request of 22 July 2026, these documents have been re-collated and sent to the State Attorney for filing with the Commission again. I am advised the abovementioned documents were filed with the Commission on 28 July 2026.

RECORD OF THE GINWALA COMMISSION OF INQUIRY

11. In respect of item 2.8: Complete record of the Ginwala Commission of Inquiry into the fitness to hold office of Adv Vusi Pikoli – 26 September 2003, the complete record has not been provided.
12. Notably, the Department has actively taken steps to locate documents forming the record of the Ginwala Commission, since November 2025. I am advised by the official responsible for records management at the Department, Mr Elias Mashilo ("**Mr Mashilo**"), that the search for the documents has proven challenging.
13. According to Mr Mashilo, when Commissions conclude their work, they do not inform the Department's record-keeping unit before delivering records to the Department. The record-keeping unit would accordingly not be prepared to

receive the records and to allocate a suitable space for storing the records. Furthermore, the proper filing, safety and protection of such records is further compromised by the fact that the Department is forced to receive these files because they can no longer be stored on leased premises once the lease expires.

14. In the case of the Ginwala Commission's records, it appears that the records had not been archived with the National Archives nor with the Department's Archive facility. It is presumed that after the conclusion of the Ginwala Commission in 2008, the records were handed over to the DG's Office which at that time was situated in Momentum Centre, Pretoria but had since moved to SALU and then back to Momentum Centre, in Pretoria.
15. The search for the documents was made even more challenging by the length of time that has lapsed since the Commission was concluded and the extent of historic documents that have been archived by the Department. Mr Mashilo's affidavit confirming the abovementioned challenges is attached to this supplementary affidavit.
16. After searching for the documents, it was ascertained that some of the documents were stored in a room at the Department's offices in SALU Building. In respect of those documents that were found, I am advised that they were provided to the Commission on 3 July 2026.
17. Notably, it appears that some documents are still missing from the record. The Department is actively searching for these documents.



18. On 25 July 2026, the Commission sent the Department's legal representatives an index which was apparently compiled by a Mr Lawson Naidoo. The index reflects the documents in the Ginwala Commission's record that the Commission has requested, and which remain outstanding.
19. I am advised that the Department has located some of the requested documents. The State Attorney filed these documents with the Commission on 28 July 2026.
20. There are still some documents that have not been located and are outstanding from the index. The documents that remain outstanding are:
- 20.1 Menzi Simelane's Supplementary affidavit and annexures MS1 to MS4 thereto;
- 20.2 Annexures to Pikoli's Affidavit, namely VP11, VP20.2, and VP24 to VP57; and
- 20.3 Frank Chikane's Affidavit.
21. In this regard, the Department will continue to search for the abovementioned documents and will send these to the Commission as and when they are located.

INFORMATION/DOCUMENTS THAT THE DEPARTMENT IS NOT ABLE TO PROVIDE

22. The Department is unable to provide the information or documents requested under item 2.9: Ministers *[sic]* of JCPS cluster meetings in respect of TRC cases from 1998 to 2027 *[sic]*.
23. I am unclear as to whether the Commission requires the names of Ministers that were part of the JCPS cluster meeting in respect of TRC cases or whether the Commission requires the minutes of the JCPS cluster meetings, from 1998 to 2017.
24. Nevertheless, it must be noted that the Cabinet Secretariat located within the Presidency (and not the Department) is responsible for keeping the minutes of executive level cluster ministerial meetings. The Department is not the custodian of the minutes of the JCPS cluster meetings and accordingly, is unable to provide the information or documents to the Commission.

CONCLUSION

25. The Department has endeavoured to comply with the Commission's requests.
26. An extensive number of documents have already been provided to the Commission.

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


DEPONENT

I hereby certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn before me at PRETORIA on the 29 day of JULY 2026, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with.


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Shogorulo

COMMISSIONER OF OATHS

FULL NAMES: Frederick Khosa

BUSINESS ADDRESS: 319 Pretoria Building Pretoria Street.

OFFICE: Pretoria.

