

Presentation to Justice Portfolio Committee on TRC Progress and Developments



National Prosecuting Authority
South Africa

25 November 2022

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1 Introduction by ANDPP

Introduction

Since the presentation to the Committee on 01 June 2022, the following progress has been made:

- ❖ Dedicated capacity to deal with TRC cases has been increased within both the NPA and DPCI.
- ❖ Increased engagements with the families/stakeholders:
 - ✓ Following internal communication from the NDPP, each division submitted names and contact details of families and representatives to the national office. This is updated in monthly reports where regular reporting to families is encouraged.
 - ✓ Engagements with DPPs and representatives of Apartheid Era Victims Family Group (AVFG).
 - ✓ Other stakeholders.

Introduction (cont.)

- ❖ Increase in NPA/DPCI TRC accountability sessions held within Divisions where challenges are addressed, and skills transfer takes place.
- ❖ These processes have contributed to the increase in the level of engagement and joint accountability.
- ❖ Between September 2021 & April 2022, 38 new investigations were opened. Between May 2022 & October 2022, an additional 32 new investigations were opened.
- ❖ In September 2021, 59 TRC matters were under investigation. As of October 2022, 64 **new investigations** stemming from the TRC have been re-opened.
- ❖ A total of 129 cases are presently under investigation.

Introduction (cont.)

- ❖ The measures summarised in this presentation are in line with commitments made by the NPA stemming from the Rodrigues judgement and communicated to the Honourable Minister of Justice and Correctional Services. They relate to our internal capacity, processes, and broader efforts to insulate the prosecution of TRC cases from political interference.
- ❖ In addition to enhanced capacity and stakeholder engagement, the NPA will appoint Senior Counsel to assess whether the measures it has adopted are adequate. If they are not, Senior Counsel shall make recommendations to strengthen them.
- ❖ If in the process of review, Senior Counsel have reason to believe that there is information amounting to a violation of Section 41(1) of the NPA Act, such issues are to be escalated to the NDPP. If necessary, the NPA will refer matters for criminal investigation.

Introduction (cont.)

- ❖ The Missing Person Task Team (MPTT) in addition to recovering the remains of 179 missing persons, also has recorded successes amongst others:
 - ✓ Location of the remains of an MK member shot dead in 1980, which excavation is currently being planned.
 - ✓ The identification of a burial site where four missing MK members were ambushed in the Caprivi Strip in 1970.
 - ✓ The recovery of the remains of a political prisoner, Mr James Booï who had been buried in a pauper's grave. His remains were exhumed and presented to the family for re-burial which took place on 30 July 2022.

2 Dedicated Capacity

Dedicated Capacity: NPA and DPCI

NPA	DPCI
Total number of dedicated TRC prosecutors appointed in divisions: 25	Total number of dedicated TRC investigators appointed in Divisions: 40
<ul style="list-style-type: none"> •DPP: KwaZulu-Natal 5 •DPP: Western Cape 3 •DPP: Gauteng Local Division 3 •DPP: Gauteng Division Pretoria 3 •DPP: Limpopo 1 •DPP: North West 1 •Other: Head Office 2 •DPP: ECD (Mthatha & Makhanda) 7 	<ul style="list-style-type: none"> Central Region: Head office, Gauteng, Mpumalanga, Limpopo and North West 19 Coastal Region: KwaZulu-Natal 7 Eastern Region: Eastern Cape 8 Western Region: Western Cape 4 Karoo Region: Free State and North West 2
Increase of dedicated prosecutors: 9 Increase of investigators: 7	

3 Monitoring and Evaluation: Progress made in investigations

Monitoring: Matters within Divisions

Division	Referred TRC Matters
DPP: WC	9
DPP: FS	2
DPP: MTHATHA	11
DPP: ECD	14
DPP: NW	5
DPP: KZN	29
DPP: MPUMALANGA	5
DPP: NC	3
DPP: GLD	25
DPP: GDP	16
DPP: LMP	10
Total	129

Monitoring (cont.)

- ❖ Internal communication forwarded to the Divisions to encourage active engagement between prosecutors and families/family representative.
- ❖ Family kept up to date and report back received at the national office monthly.
- ❖ Successful engagements facilitated by the national office with representatives of Apartheid Era Victims Family Group (AVFG) and the DPP divisions.
 - ✓ Rolled out in GDP and GLD Divisions. Attended by Directors of Public Prosecutions (DPPs), dedicated TRC prosecutors, dedicated investigators and DPCI heads in October and November 2022, respectively.

Monitoring (cont.)

❖ Stakeholder engagements

- ✓ GDP: 07 November 2022 – approximately 14 personnel and family members attended
 - ✓ GLD: 26 September 2022 – approximately 10 personnel and family members attended
 - ✓ Other Divisions to follow to ensure a more victim-centred approach is adopted.
- ❖ Continuous stakeholder engagement scheduled for December 2022.

Evaluation

Reporting

- ❖ Monthly reports received on all 129 matters under investigation from all Divisions.
- ❖ Detailed reports submitted to the national office in respect of all decisions taken.
- ❖ Divisions that are encountering challenges seek intervention. Intervention processes are implemented from the national office together with the relevant DPPs and DPCI heads.
- ❖ Divisions have self-imposed time-frames on matters that they have identified for fast-tracking. This is monitored strictly at the national office.
- ❖ Legal and administrative challenges are addressed via the national office.

Accountability

- ❖ NPA and DPCI accountability sessions:
 - ✓ Attended by both the prosecutor and investigator seized with the relevant matter with their respective heads at the same meeting.
 - ✓ Successful attendance by all investigators and prosecutors.
 - ✓ Each case docket was constructively critiqued and assessed to determine the quality of investigations and challenges facing investigators and prosecutors.
 - ✓ Existing skills were accessorised and upskilled for the benefit of prosecutors and investigators.
- ❖ Held within the Divisions of KZN, CT, NW and EC.

Accountability (cont.)

- ❖ Accountability sessions held within the divisions of KZN, CT, NW and EC.
 - ✓ KZN: Session held in June 2022; follow-up session in October 2022; 13 personnel attended.
 - ✓ CT: Session held in July: 4 personnel attended.
 - ✓ NW: Session held in October: 5 personnel attended.
 - ✓ EC: Session held in August: 22 personnel attended.
- ❖ Follow-up accountability sessions on a quarterly basis are encouraged and planned for other divisions.
- ❖ Divisions with larger volumes of matters received additional prosecutors.

Divisional Progress

- ❖ To date, there are 129 TRC matters under investigation.
- ❖ 64 new investigations have been re-opened.
- ❖ The highest volumes of TRC matters reported:
 - ✓ KZN: 29
 - ✓ GLD: 25
 - ✓ EC MAKHANDA: 25

Divisional Progress

Category A 0 - 33% Complete Focuses on available evidence, docket, inquest report, witness statements, post-mortem reports etc.	Category B 34 - 65% Complete Focuses on expert reports.	Category C 66 - 100% Complete Focuses on stages nearing completion of investigations and/or decision making.	Total
94	9	26	129

- ✓ **Category A:** In 64 of the 94 matters, statements have been obtained, witnesses have been traced, exhibits, dockets and records of inquest have been sought and some have been obtained. In most matters families have been informed, where traceable.
 - ✓ 56 matters occurred between 1980 and 1989
 - ✓ 27 matters occurred between 1970 and 1979

4 Matters Enrolled and Finalised

Matters Enrolled

Matter	Division	Status
Inquest: Mr Ernest Dipale	GLD	Arguments were heard on 1 November 2022. Judgement outstanding
S v Rorich and another (COSAS 4)	GLD	Judgement awaited on condonation application of SAPS in respect of legal costs. Accused still to plead.
Inquest: Dr HH Haffejee	KZN	Arguments have been heard on 18-19 October 2022. Inquest judgment outstanding.
S v Coetzee (Simelane)	GDP	Outcome of section 79 assessment awaited, accused must still plead.
S v Marais (Nyoka)	GDP	Accused appeared in the Regional Court, legal opinion obtained. Accused must still plead.

Matters Enrolled (cont.)

Matter	Division	Status
Mr Abdullah Haroon	CT	Inquest: 7-22/11/2022 Evidence led. Matter postponed for argument.
Ms N Kubheka	KZN	Inquest proceeded on 24/10/2022 at Umlazi). Postponed to 30/11/2022 – outcome of legal representation.
Mr Sbo Phewa	KZN	Inquest proceeded on 24/10/22 at Umlazi. Postponed to 30/11/2022 – outcome of legal representation.
Mr Zama Sokhulu	KZN	Inquest proceeded on 24/10/22 at Umlazi. Postponed to 30/11/2022 – outcome of legal representation
Mr James Mngomezulu	KZN	Inquest proceeded on 07/11/22 in Pongola. Matter postposed for outcome of legal representation.

Matters Finalised

Division	Name of Matter	Outcome
GLD	S v Rodrigues	Accused passed away on 7 September 2021. Charges withdrawn.
	Inquest- DR NH Aggett	Verdict overturned on 4 March 2022.
	Mr Paris Malatjie	Deceased was shot and killed by Sgt van As at the Protea Police Station. He was convicted of Culpable Homicide in the Johannesburg High Court, sentenced to 10 years imprisonment.
EC	Mr Sithembile Zokwe	Death in detention. Two SB police officers were convicted in former Transkei of murder: sentenced to 20 years imprisonment on 25/11/2005.
	Mr Eric Mntonga	Death in detention: Accused were tried and convicted in March and September 1989 for death of the deceased. Sentences ranged from 2 years to 12 years imprisonment.
KZN	Mr Goodwill Collin Sikhakhane	All suspects were granted amnesty. Decision was taken to not prosecute.
GDP	Mr Peter Thabuleka	All suspects were granted amnesty. Decision was taken to not prosecute.

Matters Finalised

Division	Name of Matter	Outcome
PCLU recorded prosecutions	S v Ferdi Barnard	Murder of Gordon Webster – Life imprisonment.
	S v Eugene de Kock	Multiple offences of murder, fraud etc, sentenced to two life terms plus 212 years imprisonment.
	S v Gideon Niewoudt and two others	Motherwell Bombings, sentenced to 20 years imprisonment.
	S v Wouter Basson	Acquittal
	S v Magnus Malan and others	Acquittal
	S v Kwezi Ngoma and others	Plea bargain, suspended sentence.
	S v Aron Tyani and another	Convicted and sentenced to direct imprisonment.
	S v Eugene Terblanche	Convicted and sentenced to 6 years imprisonment, wholly suspended.
	S v Blani	Convicted and sentenced to direct imprisonment.

Conclusion

- ❖ The hard, focused work and close collaboration between the NPA, DPCI, the victims and their representatives are bearing fruit.
- ❖ Monthly monitoring and evaluation of progress on all 129 investigations, interventions implemented to render support to Divisions.
- ❖ Culmination of interactive DPCI/NPA accountability sessions and ongoing skills transfer.
- ❖ Constructive participation between stakeholders and victims' families.
- ❖ We know more progress is expected, and we are committed to delivering on this commitment. Challenges still include age of matters, age of witnesses, persons of interest, suspects, destruction of records including inquest records, no trace of dockets, exhibits, etc.



IMAM HARON INQUEST 2022



INQUEST INTO THE DEATH OF THE IMAM HARON COMMENCES - CAPE HIGH COURT MONDAY, 07 TO 18 NOVEMBER 2022

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Death on the 10th floor: The search for truth in South Africa
Families of anti-apartheid activists who died in the infamous John Vorster Square detention centre pursue justice.



NPA must prosecute apartheid-era crimes, urges TRC commissioner



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South Africa

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