

TRC matters Update (including payments to beneficiaries): DoJ&CD and NPA briefing (with Deputy Minister)

Justice and Constitutional Development

17 September 2024

Chairperson: Mr X Nqola (ANC)

Meeting Summary

Video

The Department of Justice and Constitutional (DoJ & CD) and the National Prosecuting Authority (NPA) updated the Committee on the progress of processing the 300 cases referred by the Truth and Reconciliation Commission (TRC).

The Committee heard that since Parliament approved reparations to TRC-identified victims in the form of a once-off R30 000 grant, of the 21 676 persons identified as victims, 17 428 have received payment. Thus far, R53 million has been spent on the interim individual grants, and R497 798 781 has been spent on the final once-off individual grants. Even though the Committee was pleased that many victims had received their grant allocation, it questioned why the department had not yet paid grants to the remaining 4248 beneficiaries. It encouraged both the department and NPA to fast-track the tracing of victims.

The Committee was pleased that 180 of the 477 remains of persons who disappeared in political circumstances between 1960 and 1994 have been exhumed, handed over to the families and reburied by the Missing Persons Task Team established by the NPA in 2010. However, the Committee wondered if the department was doing enough to commemorate these persons and others who suffered at the hands of the Apartheid regime and to educate the public on the sacrifices they made for the liberation of the country.

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.

In his opening remarks to the Committee, the Deputy Minister of Justice and Constitutional Development admitted that despite the significant amount of work done since the TRC submitted its report, the department could not say that it has finalised all of the tasks, nor could it say that the progress has been made fast enough. A directive has since been given by the Ministry to the relevant officials in the department to resolve the matters speedily.

Some Committee Members believed that the starting point of the TRC's investigations should not have been 1960, as it excluded many others who suffered under the colonial and Apartheid regimes before then. These same Members also argued that special courts should have been put in place to specifically adjudicate on these matters, considering the judicial system's backlogs and lack of human resources. These courts would be ad-hoc and given specified time periods to process all the cases.

The NPA told the Committee that a TRC component was established in 2021 to prioritise and drive progress on TRC matters in collaboration with the Hawks. The NPA recently applied for permanent posts to be created in the component for prosecutors who will only focus on processing TRC cases. The Committee welcomed this as a positive step in the NPA finalising the matters by the 2026 deadline.

Meeting report

The Chairperson welcomed everyone to the meeting. Thereafter, he said the purpose of the meeting was for the Committee to receive a briefing from the department and NPA on the progress of the TRC-related. Initially, the Committee was also set to receive the legal opinion it requested from the Parliamentary Legal Service on the Protection of State Information Bill; however, he suggested that this item be postponed to another day. He asked if his suggestion was in order.

Mr O Mathafa (ANC) said it was in order.

Adv B Mkhwebane (EFF) also said it was in order.

The Chairperson asked if any apologies were received.

Mr Vhonani Ramaano (Committee Secretary) mentioned that no apologies were received.

Adv Mkhwebane asked if the Committee support staff could begin drafting an action plan to combat the crisis of statutory rape of young girls in the country.

The Chairperson noted the suggestion and pointed out that the Speaker had tasked the relevant committees to draft separate action plans.

Afterwards, he invited the Deputy Minister (DM) to make his opening remarks.

Opening remarks by the Deputy Minister

Mr Andries Nel (Deputy Minister of Justice & CD) tabled apologies on behalf of the Minister and Director-General (DG) of the department who are attending the BRICS (Brazil, Russia, India, China, South Africa) Ministers of Justice meeting.

Thereafter, he said the department was aware that it had been entrusted with one of the most painful tasks arising out of some of the darkest chapters of the country's history: giving effect to the recommendations of the TRC Commission, as outlined in the Act, and those of the TRC report.

Although it has been difficult, the department has gotten tremendous work done since the TRC submitted its report. In carrying out its work, the department always remained mindful of the fact that it is dealing with individuals who have experienced some of the most horrible forms of human rights abuses. These were the very same actions that led to Apartheid being declared as a crime against humanity. Even though there has been progress, the department could not say that it has finalised the tasks, nor could it say that the progress has been made fast enough.

At this stage, the Ministry has indicated to the relevant department officials that the matters must be resolved speedily. It has committed to working with that team and other Cabinet colleagues who share responsibility for parts of the work, in particular those that relate to individual and community reparations.

In some instances, the Ministry has not been as fast as it would have liked in processing those matters, much of which was due to the involvement of other departments, like Education, Health, Human Settlements, and Social Development. The department is looking for ways to improve its coordination with these departments.

In its briefing, the NPA will communicate on the prosecution of Apartheid-era crimes, the attempts being made to hold and bring to account those responsible for the perpetration of those horrible crimes, and also the good work done by the Missing Person's Task Team (MPTT) in locating the remains of those cruelly murdered by the Apartheid regime. It will also elaborate on the work in Zambia and Zimbabwe to exhume and prepare the remains of liberation struggle veterans for repatriation back to the country.

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 people identified as TRC victims and implementing the recommendations approved by Parliament.

The department has several issues to resolve before finalising the regulations. However, it has concluded several regulations related to the repatriation of the bodies of those killed outside of the country.

Briefing by the DoJ & CD on the progress made on TRC matters

Adv Shireen Said (Deputy Director-General: Constitutional Development at the DoJ & CD) and Ms Lufuno Mmbadi (Senior Manager for the TRC Unit at the DoJ & CD) took the Committee through the presentation.

Adv Said began by indicating that Parliament approved reparations to TRC-identified victims through a once-off grant of R30 000, medical benefits and other forms of social assistance, symbols and monuments, rehabilitation, and communities. Subsequently, regulations were put in place for the once-off grant: exhumations, reburial or symbolic burial of deceased victims' reparation, basic education reparation, and higher education assistance reparation.

Ms Mmbadi said the TRC identified 21 676 persons as victims, 17 428 of whom applied for and received the once-off grant of R30 000. Thus far, R53 million has been spent on the interim individual grants, and R497 798 781 has been spent on the final once-off individual grants.

After the regulations on exhumations were published in 2010, the NPA established an MPTT to conduct investigations into the 477 cases of persons who disappeared in political circumstances between 1960 and 1994. To date, 180 exhumed remains have been handed over and reburied.

The department has not yet finalised the development of the draft regulations on housing, community rehabilitation and special health services for victims.

After the presentation, the Chairperson invited the National Director of Public Prosecutions (NDPP) to provide an overview of the NPA's presentation.

Overview by the NDPP on the NPA's presentation

Adv Shamila Batohi (NDPP) stated that the NPA has, for the past few years, tried to bring a level of justice and accountability about the atrocities committed during the Apartheid years and to help many families begin their road to healing. Even though it has been a difficult and challenging process, the NPA was pleased to see significant progress made in dealing with the unspeakable acts and crimes of gross human rights violations committed under a veil of secrecy during the Apartheid era.

The NPA has adopted a multi-pronged approach, including prosecutions and inquests to bring justice and accountability. In cases where there is new evidence, the NPA has re-opened the inquests; where inquests have not been held, the Authority has recommended that they be to the Minister.

The final aspect of bringing about accountability and justice for the families has been carried out by the MPTT, which has made significant strides in tracing, locating and returning the remains of many the activists and victims who died or disappeared in mysterious political circumstances between 1960 and 1994.

The Authority has been working very closely with the Hawks, and it established a dedicated capacity in 2021 to prioritise the TRC matters. The teams adopt a very hands-on approach to the investigations, which is bearing fruit.

There have been two key projects. The Gallows exhumation project seeks to recover the remains of political prisoners who were hanged at the Gallows and hand them to their families. The second project is the exile repatriation project currently underway in Zimbabwe and Zambia. This project focuses on the exhumation and repatriation of the remains of many exiles.

Even where all leads are exhausted, and the Authority cannot prosecute, open an inquest or recover remains, it tries to provide some degree of closure to the families by informing them that it tried to explore all avenues to ensure justice and accountability, she said.

Briefing by the NPA on the progress made on TRC matters

Adv Rodney de Kock (Deputy National Director of Public Prosecutions: National Prosecutions) and Ms Madeleine Fullard (Head: Missing Persons Task Team at the NPA) took the Committee through the presentation.

Adv de Kock mentioned that a TRC component was established in the NPA in 2021 to prioritise and drive progress on TRC matters in collaboration with the Directorate for Priority Crime Investigation (DPCI/Hawks). Since September 2021, 104 new investigations emerging from the TRC have been reopened, with 126 cases currently under investigation. Due to the slow progress in processing matters, the NPA and Hawks have increased their joint accountability sessions. In addition, the NPA hired contract prosecutors dedicated solely to TRC matters.

Families led by the Apartheid Era Victims Family Group (AVFG) approached the NPA to engage with prosecutors and investigative officers to support their progress in establishing trust. Following these engagements, the NDPP issued a directive that prosecutors should actively engage with families and keep them updated on the progress of matters.

Some challenges in processing matters are the destruction of files and documents as part of a deliberate policy to conceal information and the fact that many of the witnesses/accused/suspects are either very old or deceased.

Ms Fullard said the TRC recommended that a task team be established in the NPA to continue to trace the fate and whereabouts of those who disappeared in political circumstances and to recover their remains wherever possible. Up to this point, the MPTT has recovered the remains of 180 individuals inside the country.

The MPTT has two projects that focus on groups that faced specific forms of political repression and deaths: The Gallows Exhumation Project and the Exile Repatriation Project. The gallows exhumation project aims to recover and return the remains of political prisoners who were sentenced to death and executed on the gallows between 1960 and 1990. Only the remains of 9 hanged political prisoners need to be recovered. Whereas the exile repatriation project aims to exhume, prepare and repatriate the remains of those who died in exile back into the country.

Adv Batohi mentioned that the NPA appointed Adv Ntsebeza, Senior Counsel (SC), in October 2022 to review whether the measures it has adopted to deal with TRC matters are adequate, in line with the remarks of the South Gauteng High Court full bench in the 2019 Rodriguez Judgement. By appointing Adv Ntsebeza SC to review and assess the internal measures objectively, the NPA submitted itself to external scrutiny. This move also served as a public reaffirmation of the NPA's commitment to upholding its constitutional mandate by prosecuting without fear, favour or prejudice and doing whatever it can to ensure that those responsible for the atrocities during the Apartheid era are held to account.

Adv Ntsebeza, SC, submitted his report in June 2023, which is available on the NPA's website. A copy was shared with the previous chairperson of the Committee and the former Minister of Justice & CD. The report found that the measures adopted and implemented by the NPA to deal with TRC matters—namely, the structure and the checks and balances used—are largely adequate. The report

further found that the NPA has abided by the recommendations.

The Chairperson opened the floor for discussion.

Discussion

Adv G Breytenbach (DA) acknowledged the enormous complexity and difficulty associated with investigating and prosecuting TRC cases, and she thanked the MPTT for the work it has done so far.

After that, she posed a series of questions, such as whether the Priority Crimes Litigation Unit (PCLU) had made any progress in the prosecution of TRC matters between 2003 and 2017, what the cause of delay was in prosecuting the TRC matters between that period; whether any consequences had been taken against those in the PCLU for failure to prosecute any of the cases; what the challenges were in accessing classified information, why they were there in the first place, and how the Committee could assist in resolving them; what the prospects were of assigning judges on an urgent basis to the matters, and what arrangements were in place to address the serious lack of capacity on the bench.

She said time is the greatest enemy of these matters, as the accused individuals and potential witnesses may die, or witnesses' abilities to recollect events may diminish with age. Nevertheless, she was hopeful that progress would be made, as the matters appeared to be micromanaged.

In her second set of questions, she asked for comment on whether the self-imposed deadline to finalise the matters by 2026 and whether there was political interference between 2003 and 2017, what had been done to renew the contracts of the prosecutors prosecuting TRC matters, which are set to expire this year; on whether the NPA has followed the court recommendations to improve the availability of evidence, and if not, why; what the reasons for the recent postponement of the Cradock Four matter until next year, what the factors leading to the postponement were, and whether they could have been dealt with by the NPA before the hearing on 2 September 2024.

The long postponements of cases did not assist anyone and only served to traumatise the families involved further. While she noted the NPA's statements that it had engaged members of the Cradock 4 families, she said that in her engagements with them, they indicated that the Authority was not engaging with them during the sessions but instead providing briefs.

Mr T Tshotetsi (ANC) congratulated the NPA for having successfully overturned the judgements of the court, which wrongly found that, in some cases, the cause of death was suicide and not murder. He asked if the NPA planned to conduct judicial inquiries that sought to overturn other incorrect court judgements and, if so, what the total number was.

The presentations indicated that 477 matters had been handed over to the MPTT, and he wondered how many of them had still not been finalised. The inquest on Boikie Tlapi was particularly interesting to him, whose family asked the Committee to ask the NPA whether it was looking into his disappearance. He also asked whether the NPA kept the families informed on the status of the matters.

To him, it seemed that private prosecutions were finalised much more speedily than those prosecuted by the NPA – as was the case with the Ahmed Timol case – and he asked if his view was correct and, if so, what the reasons were for this difference. Due to the high costs, not all families can access private prosecutions.

In addition, he asked if there were still political prisoners in the country.

Mr D Kloppe (DA) felt that little was being done to process the matters given the repeated postponements of cases since the first TRC report was submitted to Former President Nelson Mandela. All the families wanted was closure; they had to wait sometime to get that. Furthermore, the longer it took to finalise the matters, the higher the likelihood of witnesses either dying or forgetting some of the details in the cases, preventing victims and their loved ones from obtaining justice. Nevertheless, he applauded the MPTT for its commitment to complete its work in one year and encouraged the NPA to follow its lead.

Afterwards, he asked what consequences would be implemented if the 2026 deadline was not met, how many projects related to the new community rehabilitation approach had been rolled out, how they would be funded and monitored, and who would be responsible for their monitoring; whether the NPA and its provincial Directors of Public Prosecutions (DPP) had partnered with the State Security Agency (SSA) to investigate TRC matters; and for a progress update on inquests involving Dr Hoosen Haffeejee and Imam Haron. In Dr Haffeejee's case, the court recommended that the NPA consider instituting criminal charges. In the case of Imam Haron, the court ordered that certain individuals involved in his death be referred to the Western Cape DPP and that the medical practitioners be referred to the medical council.

Mr Mathafa acknowledged the good work being done by the department and NPA on these matters. He was also pleased by the DM's admission that the pace of administering reparations has been slow due to the lack of regulations. He advised that the department should look into what other issues may have contributed to the slow progress to prevent further delays. Moreover, he proposed that the Ministry consider asking the President to establish an inter-ministerial committee to better coordinate the DoJ & CD and the departments it is working with on the TRC matters.

The presentations clearly showed the good work done by the TRC to reveal the true nature of the Apartheid system's cruelty and move

the country towards forgiveness and reconciliation. However, it appeared that ordinary people on the street did not have the same appreciation. As such, he asked if the department had thought of initiatives to educate South Africans, especially the younger generation, on the TRC's work and the history of apartheid.

Many reports suggest that crimes similar to those committed during Apartheid were now being perpetrated by private individuals, like the incident in Limpopo where two black women were killed and fed to pigs. Such crimes illustrated the slow progress in bringing about national reconciliation. He asked the department if it has thought about implementing programmes aimed at fostering national reconciliation – such as an ongoing national dialogue – and the promotion of healing amongst communities that were divided as a result of Apartheid. The findings of the TRC could be the starting point in communicating these efforts to society.

He then posed several questions, including why there was a difference in the cases formally communicated to the NPA by the TRC requiring prosecution against the 126 cases currently under investigation, if any psychosocial support had been provided to victims if any plans were in place to honour victims; what impact the lack of resources has had on the finalisation of cases; how the expenditure line items on the repatriations would be funded and what mechanisms were in place to ensure they are accounted for; whether the department has a tracking mechanism to monitor and report on the progress of cases, and if so, whether timelines were in place for reporting; whether the NPA had implemented the recommendations from Adv Ntsebeza's report that were related to the Rodrigues judgement, and how far it was in doing so; which stakeholders were united by the NPA to its accountability sessions; and if the department also conducted accountability sessions.

He encouraged the NPA to continue its good progress in its accountability sessions with the Hawks.

Ms N Motaung (ANC) acknowledged why the NPA delayed some of its investigations. She asked the department how it dealt with cases where the accused is over 80 years of age and in cases where witnesses are afraid or unwilling to testify.

Mr S Nomvalo (MK) mentioned that there has been a disruption in the evidence regarding some TRC matters. Many families have lost hope due to the delays, while many perpetrators have still not faced the highest price for their misconduct. The question that should be asked, he said, is how to reinstate confidence in the people who still want justice. In his view, the TRC should have looked into atrocities committed before 1960 so that all victims who suffered were accounted for. In addition, he argued that special courts to adjudicate specifically on these matters should have been established, considering the backlogs and lack of human resources in traditional courts. These courts would be ad-hoc in nature and would be given specified time periods to process all the cases.

Clear timeframes had to be established and communicated to the victims' families so that they would not begin to lose confidence in the NPA's ability to finalise the matters.

He asked for clarity on whether the department had finished building houses for the victims in need or had only identified the beneficiaries for this project.

To fast-track the tracing of victims, the department had to partner with the South African Police Services (SAPS). Together, they could place registers in police stations for victims to make themselves known. He asked what equipment was used to trace down victims and whether it was effective.

Adv Mkhwebane asked questions on what measures were in place to assist the communities who lived in the former KwaNdebele homeland and were terrorised by a vigilante group called Imbokodo in 1986; whether the department worked with non-governmental organisations (NGO) like Khulumani Support Group (KSG); how often the department and NPA communicated with victims; the details of Section 10 of the Witness Protection Act; the role the Committee can play in the fast-tracking of these matters; the number of individuals in the MPTT who can speak the country's multiple official languages; whether the contracts of the prosecutors assigned to TRC matters would be renewed; how far the department was in finalising the payment of grants to the remaining 4248 victims; why the NPA's presentation only highlighted 126 cases under investigation identified perpetrators when the TRC report identified 300 perpetrators; why the NPA had only prioritised 126 cases, what criteria was used, and for the Committee to be provided a spreadsheet on each of the cases; and why the NPA could not access all of the TRC's records, given that the department was the custodian of them.

Parliament had a duty to ensure that the NPA had access to all records so that all matters could be dealt with speedily.

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.

Regarding the mechanisms used to trace victims, she said the department's constitutional development legislation branch is working on developing policies and finalising regulations, with deadlines set for the latter. For instance, the housing regulations must be signed off before the end of this financial year.

She added that the department is awaiting further information on the community rehabilitation programme.

Adv Said explained that the constitutional development unit comprised three chief directors dealing with constitutional implementation, social justice and participatory democracy, international mutual legal assistance and extraditions. The constitutional values inform the work of the third branch of human rights, equality, good governance, and accountability. All matters relating to community healing, promoting social cohesion, tolerance and non-discrimination fall under the constitutional implementation unit.

The interface between all the units was significant in the attempts to look into crimes committed in Apartheid, as well as addressing issues of discrimination, inequalities and tolerance. The social justice chief directorate has drafted a national action plan for racism, intolerance, and xenophobia, which is based on the World Conference on Racism Conference's recommendations. The plan has a rapid response mechanism, highlights the instances of intolerance in the country, and is made up of external stakeholders – including Chapter 9 institutions – and meets regularly.

The department also has a project that seeks to legally empower communities. Many have been found to be legally illiterate due to the historical actions of the Apartheid government regarding their constitutional and human rights. Community advice officers around the country have been supported in spreading awareness of these rights, and the department hopes to intensify these efforts in the next five years.

The conference on human rights held earlier this year looked at the mechanisms put in place by government departments to protect the constitutional rights of citizens. One recommendation that came up repeatedly was the need to improve the attitude and mechanisms used to resolve discrimination-related disputes. After going through many cases adjudicated by the equality courts, the department noted that communities could not identify when they were being discriminated against.

The department is considering how best to work with communities to promote social cohesion, whether through awareness and engagement programmes or dialogues. These programmes will complement the annual moot court competition the department currently holds in collaboration with the Department of Basic Education in high schools, where students can engage with constitutional-related issues and better understand their rights.

A series of dialogues have been held this month as part of the department's programmes in the build-up to Heritage Day, with others planned for November. She said the discussions in these dialogues will assist the department in developing its indicators.

Ms Mmbadi indicated that the President's fund will fund the community reparation projects. The regulations will clarify how the projects will be managed and who will be responsible for doing so.

On whether psychosocial support is given to victims, she outlined that the regulations make provisions for psychosocial support. Before the exhumation and handing over of bodies, the department requests the Department of Social Development (DSD) to provide the families with psychosocial support.

Regarding whether the department has honoured the victims, she stated that this function belonged to the Department of Sports, Arts and Culture (DSAC), not the DoJ & CD. The DSAC does so through the changing of street names and the creation of new monuments. The repatriation programme intends to restore the human dignity that the different TRC-identified victims lost as a result of the gross human rights violations committed under the Apartheid government.

She confirmed that the department had identified the beneficiaries for the housing project.

Regarding the questions related to the payment of the individual grants of R30 000, she mentioned that the remaining beneficiaries referred to those who decided not to receive the individual grant. Some beneficiaries were unaware of the grants as they did not expect to be paid for their contribution to the country's liberation, while others could not be traced. Nevertheless, the Promotion of National Unity and Reconciliation Act allowed those who had yet to receive their grant to apply for them at any time.

On the questions related to the community rehabilitation programme, she explained that the department can only rehabilitate 18 of the 128 identified communities due to limited funds. Only 3 or 4 communities have been rehabilitated, and work will only begin on the remaining 14 or 15 once the regulations have been published.

She confirmed whether the department is working with the KSG and whether it collaborates with the group, especially when it conducts community outreach programmes on the education reparations it offers. During the Khulumani Galela Campaign, representatives from the KSG could engage with the former Minister of Justice and the current DG. One of the issues they raised during the engagement was that the TRC followed a closed-list approach, meaning that those not identified were not entitled to reparations. After the engagement, the previous Ministry requested those who the TRC unit had identified to receive reparations to submit their names so that the department could verify if they had received them. The department found that those who submitted their names had received their reparations.

The TRC defined a victim as a person who had suffered gross human rights violations in the past. All people not defined as such by the TRC fell outside of the department's mandate.

Regarding the proposal to expand the TRC mandate to include crimes committed before 1960, she said it was for Parliament to decide whether the TRC process should be reopened and broadened to include victims who may have suffered from atrocities before 1960.

On how often the department communicated with victims or their families, she indicated that the department readily communicates with victims and their loved ones, mainly through WhatsApp, direct phone calls and outreach programmes.

Adv Batohi, on the delays in processing the matters, said the NPA has acknowledged publicly that there have been unacceptable delays in providing accountability and justice for victims and survivors of atrocities committed during the Apartheid era. Despite the

challenge, the Authority is trying its best to get the cases moving, but it has struggled as not much was done before 2018 – which raised serious questions.

Adv Ntsebeza was appointed by the NPA to review the structures and effectiveness of its TRC component, following the findings in the 2019 Rodrigues Judgement that there was political interference in the work of the TRC prosecutions and related matters between 2003 and 2007, she outlined.

In his report, Adv Ntsebeza indicated that he did not have sufficient time to look into the matter and recommended a commission of inquiry. In the course of the Rodriguez case, Adv Pikoli and other members of the NPA deposed to affidavits, which spoke to what they referred to as interference in the work of the NPA in its ability to investigate and prosecute matters properly. The NPA is doing what it can to ensure no further delays, notwithstanding the challenges.

When asked why private prosecutions were finalised more speedily than ones done by the state, she assumed that the question referred to private legal representations as opposed to private prosecutions, as she was not aware of any inquest being privately prosecuted. When she took office, legal representatives of families and NGOs placed much pressure on the NPA to open inquests on issues.

The NPA's approach has been to assist all families that cannot afford legal representation. One way it has done so is by asking that a joint inquest be held, as was seen in the Dipale and Haffeejee cases. As those cases had a bigger public profile, an impression was created that they were being prioritised over others.

Regarding whether the contracts of the contract prosecutors would be extended, she said that even though the contracts can only be for 12 months, the NPA was granted an exception to appoint contract prosecutors to deal specifically with TRC matters for three years. The NPA recently applied for the new posts to be permanent as it anticipated that the processing of these cases may take longer than expected. The prosecutors can be absorbed after the TRC matters are resolved. The department has yet to give an outcome regarding the application.

Ms Fullard, on how many of the 447 matters involving individuals reported missing in the TRC report had been finalised, highlighted that the 180 individuals whose remains have been recovered were not on that list because the list did not include victims who arose out of the amnesty process, like Pebco 3 and the Mamelodi 10. The fact that the amnesty cases are not reflected on the list has more to do with the timing of the release of the TRC report.

Some people on the list of the 447 relate to larger cases, like the case of Richard Lentsela whose family reported him missing to the TRC. Through its work, the MPTT established that he had been shot dead along with three other uMkhonto we Sizwe cadres near the border of Botswana. Their remains were recovered in a small village near Rustenburg and were riddled with bullets. The bodies of any individual found to have been killed in the same incident as someone identified on the TRC list must be recovered.

Regarding Boikie Tlhapi, she explained that the MPTT dealt with two types of cases. One is clandestine/covert abductions and disappearances. In those instances, the fate and whereabouts of the missing person or deceased are known only to a small group of perpetrators. The only cases in that category where it has managed to recover remains are cases where the perpetrators applied for amnesty, as was done in the cases of the Mamelodi 10 and Pebco 3 – the MPTT would not have been able to locate the burned remains of the Pebco 3 without the amnesty application which revealed that they had been abducted and taken to Cradock.

In those clandestine/covert abductions, the MPTT's capacity to recover remains depends on the availability of information from amnesty applications. There was no such application in the case of Boikie Tlhapi.

The second category of cases the MPTT deals with are ones where people were killed in the public domain in a skirmish or an incident that was not clandestine. A lot of the remains recovered have been of combatants killed inside the country in clashes with the police.

On what is being done to memorialise TRC victims, she said the MPTT tries to ensure that the names of TRC victims, and those still alive, appear on the Wall of Remembrance at Freedom Park in the City of Tshwane. Political prisoners executed on the gallows are memorialised at the Gallows Museum at Kgosi Mampuru Prison, which she believes is one of the most outstanding museums worldwide and needed more publicity.

As part of its exile repatriation project, the MPTT has met with the South African Local Government Association to discuss the possibility of municipalities memorialising deceased exiles whose bodies have been repatriated by renaming streets and public buildings.

On who the MPTT has partnered to trace the remains, she indicated that the MPTT works with the SAPS and Department of Health, both of which house forensic pathology facilities, mortuary books, and registers, all of which are fundamental to identifying unidentified bodies that have been brought to the mortuary at a particular time. In addition, the MPTT works with the municipalities, especially their cemetery departments and the Department of Home Affairs.

The MPTT also uses residual security police documents found in the national archives, like the security police photo album, which contains 7,000 photographs and information about people in exile.

She mentioned that the MPTT incorporates different spiritual, religious, and cultural practices in its work to communicate with families across language and cultural differences. The team is multilingual and can engage with different communities.

Adv de Kock pointed out that the DPPs are responsible for the operational management of the TRC cases.

Regarding the total number of inquests underway, he said the NPA has 25 inquests at various stages of preparation, which are either on the court rolls or have been requested to be reopened. The hearing of an inquest depends on the availability of judges, which will be checked by the NPA's head office in collaboration with the DPP of a particular jurisdiction.

In response to the question of whether special courts are needed, he pointed out that the majority of the inquests will be dealt with in the high courts, so each gets the necessary attention.

On why private prosecutions were done more speedily than public ones, he underlined that there were 0 prosecuted TRC matters, as the mandate to deal with these matters rests with the state, which the NPA represents in all criminal proceedings. Furthermore, all the matters fall within the mandate of the investigative authorities (the Hawks) and the prosecuting authority. The NPA does work with private practitioners and held a meeting with them in January of this year. Where family members of victims choose to be represented by private legal practitioners, the NPA will offer to assist.

Regarding the concerns raised around the timelines, he said there are common themes throughout the presentation: one, the identification of all the cases that need critical attention; two, that there must be accountability in terms of both the investigation and prosecution of the matters; three, that there is accountability in terms of monitoring and evaluation which happens monthly; and four, that in each of the cases, an action plan is developed with specific timelines. Thus, the NPA is confident that the measures put in place will do justice to all of the work that has to be done, and it will adhere strictly to the timeframes.

While the work is ongoing, the NPA could not provide a fixed timeline for resolving the matters as new cases are added from time to time, he explained.

On whether the contracts of the prosecutors of TRC cases in the NPA would be renewed, he mentioned that the prosecutors would be permanently appointed. Even if the prosecutors are promoted from their positions, they can still be retained to complete cases worked on in the TRC. The NPA has asked for an extension of the contracts and to hire additional prosecutors for the contract. The latter will depend on the creation of the permanent capacity requested.

On witness protection, he highlighted that the presentation reflects the NPA's plan to host a 2-day workshop on 07 November, with all the relevant officials involved in TRC work expected to be present. A strategy will be developed to address concerns regarding witness protection at the workshop. The NPA does have an internal witness protection unit where many witnesses are held under witness protection.

Regarding whether the scope of the inquests should extend before 1960, he explained that Parliament decided to set the period from 1960 to 1994. The TRC did not specify the total number of referrals. The NPA has gone through all the volumes of information provided by the TRC work to identify which matters the TRC did not make any finding on amnesty and where outstanding investigations were required. He stressed that there was no list of 300 cases of perpetrators referred to the NPA.

The current total number of matters dealt with by the NPA since 2021 is 156, with 126 currently under investigation.

On the NPA's ability to engage with victims of different language groups, he indicated that 8 of the 10 DPPs are multilingual. The NPA personnel are in line with the country's equity profile and demographics.

He asked the Eastern Cape DPP to answer the question on the Cradock 4 inquest.

Adv Barry Madolo (DPP: Eastern Cape Division of the NPA) stated that the inquest was postponed after an agreement was reached between all the parties involved before the hearing on 02 September until 02 June 2025. This agreement was reached after a delay in fees paid to counsel representing former SAPS and SSA officials and a request made by a member of the Goniwe family for the state to pay his legal representation.

Adv de Kock, on the classified information, mentioned that this was flagged as a practical challenge and no assistance was needed from the Committee. Classified pieces of information have, from time to time, been declassified by the relevant department in collaboration with the SSA. A meeting has been set up between the NPA and SSA from 02 to 03 October to address the outstanding issues.

Touching on the comments related to the Ntsebeza report recommendations, he highlighted some of the key recommendations: the continuation of the accountability sessions; the TRC component must play a critical role in the investigation of the matters in collaboration with the SAPS, which is being done; improved the alignment of the work of the MPTT and TRC component (the NPA has closed the gaps that existed between the two); the sharing of information between the MPTT and the NPA's investigative team, which has been followed up on; SAPS legal representation for accused appearing in courts (the NPA has addressed a letter to the National Commissioner of SAPS and it believes that the matter has been resolved); the payment of SAPS expert witness fees, which has been resolved; data management in all the TRC investigations and prosecutions (the NPA is working on a system to upload the progress of

each matter).

Adv Batohi reminded the Committee that Adv Ntsebeza's report found that the processes, structures, and systems put in place were largely adequate. She thanked the Committee for acknowledging the complexity and difficulties of these issues and for offering to assist where it could.

Deputy Minister Nel said he had a few brief points to make. First, he thanked the Committee for the constructive engagement on the topic. The questions demonstrated a Parliament at work and a Parliament fulfilling its oversight obligations.

Two, he thanked the department and NPA for their work so far.

Three, he told the Committee that the former DM of Justice, Mr John Jeffery is listed by the TRC as a victim of gross human rights violations, having narrowly escaped with his life in an ambush in KwaZulu-Natal during the height of the violence, but he declined to accept reparations.

Fourth, he indicated that Members raised fundamental policy matters that would be taken to the Minister. The Ministry undertook to engage further with the Committee on issues like the proposal to expand the scope before 1960, the closed list, the establishment of special courts, the alleged political interference in the prosecution process – which he claimed not to be aware of or been a part of – and how to ensure issues of racism and sexism as experienced in Apartheid never rear their head again. The national plan of action against racism and related intolerance and the forthcoming national dialogue will be an appropriate platform to discuss the issues, he felt.

He felt the need for tighter coordination and collaboration between the relevant departments and authorities working on these cases was clear. The department will explore the proposal of an Inter-Ministerial committee.

Five, he said international cooperation between the MPTT and other countries like Argentina – which had a similar history of individuals being kidnapped, tortured and killed – highlighted the essence of what international solidarity was all about.

Adv Mkhwebane asked the department to submit a spreadsheet of all the cases it is dealing with and a report on what happened to the alleged vigilante group Imbokodo, which operated in KwaNdebele.

To her, the department and NPA had forgotten about the 2026 deadline and were not showing enough initiative in processing the matters. Nevertheless, she acknowledged the efforts made to create permanent structures.

The Chairperson asked that these questions be answered in writing.

Adv Batohi assured the Committee that the NPA would provide the information.

The Chairperson thanked the department and NPA for their engagement and expressed his satisfaction that the department still fulfilled its obligations without the Minister and DG.

He said the committee will monitor the progress of the matters and play a supportive role, where it can, to ensure that the 2026 deadline is met. Government departments needed more collaboration to carry out the exhumation and repatriation programme.

He announced that a meeting had been scheduled for Friday, including the relevant committee secretaries, to begin discussions on the action plan to combat statutory rape.

The meeting was adjourned.