



24 November 2022

**BRIEFING NOTE: TRUTH AND RECONCILIATION COMMISSION
INVESTIGATIONS/PROSECUTIONS
UPDATE FROM THE NATIONAL PROSECUTING AUTHORITY**

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1. INTRODUCTION

In 1999, the Truth and Reconciliation Commission (TRC) referred more than 300 cases of implicated persons who had either not applied for or been refused amnesty to the country's prosecution authorities. However, the protracted delays in investigating and prosecuting these matters have meant many alleged perpetrators have died without being held to account and family members of the victims of these crimes have died without seeing justice done. Despite the numerous obstacles they have faced over the years, many families have continued to pursue justice in respect of these matters.

The Courts have also expressed concern about the undermining of the law in this regard. In June 2021, the Supreme Court of Appeal, in the case of *Rodrigues v National Director of Public Prosecutions and Others* ((21 June 2021) noted that ***“the Full Court rightly recommended a proper investigation into, the failure by the NPA to pursue these cases, by the NDPP and a determination whether any action in terms of s 41(1) of the National Prosecuting Authority Act 32 of 1998 (NPA Act) was necessary.”***¹² (The Committee should

¹Rodrigues v National Director of Public Prosecutions and Others (1186/2019) [2021] ZASCA 87; [2021] 3 All SA 775 (SCA) (21 June 2021 para [27], p11 (Accessed at <http://www.saflii.org/za/cases/ZAGPJHC/2019/159.pdf>). The Full Bench stated that:

- “Society as a whole had an ongoing interest in the work of the TRC and the follow up that the government had committed itself to. Parliament, which ultimately represents the legislative authority of the State, had a right to know when the letter and spirit of legislation that it had passed was being deliberately undermined. None of this occurred and the NPA must accordingly accept the moral and legal consequences of this most serious omission and dereliction of duty on its part. It is not open to the NPA to seek to absolve itself of its constitutional duty in failing to pursue the TRC cases.
- It is also for these reasons that the conduct of the relevant officials and others outside of the NPA at the time should be brought to the attention of the National Director of Public Prosecutions for her consideration and in particular, to consider whether any action in terms of Section 41(1) of the NPA Act is warranted.

There must be a public assurance from both the Executive and the NPA that the kind of political interference that occurred in the TRC cases will never occur again. In this regard they should indicate the measures, including checks and balances, which will be put in place to prevent a recurrence of these unacceptable breaches of the Constitution.”

² NPA Act 32 of 1998. Section 41: Offences and penalties – provides that: (1) Any person who contravenes the provisions of section 32 (1) (b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment. (Section 32 (1) (b) provides that: (1) Impartiality of, and oath or affirmation by



note that the Minister of Justice committed publically to the establishment of an inquiry to investigate the suppression of the cases referred by the TRC to the NPA.³ Reportedly, this inquiry would be headed by a retired judge. No further information has been made publically available on any progress with this inquiry. However, the NPA now reports on plans to appoint Senior Counsel to assess whether the measures it has adopted in respect of TRC matters are adequate. Furthermore, if in the process of review, Senior Counsel has 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. It is unclear if this is a separate (or alternative) process from the one involving a judge that was proposed by the Minister.)⁴

The Portfolio Committee will recall that it has held **two dedicated briefings** with the National Prosecuting Authority on progress around matters emanating from the Truth and Reconciliation (TRC) process.

<p>8 December 2021</p>	<p>The Portfolio Committee was briefed by the National Director of Public Prosecutions (NDPP) Adv Batohi on the reasons that the National Prosecuting Authority (NPA) had missed a deadline (<i>of 2 December 2021</i>) for issuing a prosecutorial decision in the 1985 murder of the Cradock Four.⁵⁶</p> <ul style="list-style-type: none"> • The NDPP informed the Committee that TRC matters had not been prioritized in the past and it was only in 2017 when investigations into these matters were set to begin. The NPA highlighted in particular the need for a dedicated investigative capacity, and that these functions rested with the Directorate for Priority Crime Investigation (DPCI). The DPCI and the NPA had both faced various challenges which had resulted in their being a lack of dedicated capacity to properly deal with these matters. • In 2021 a decision was made to establish a dedicated prosecutorial force within the National Prosecutions Service (NPS) under the direct
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members of prosecuting authority; (b) Subject to the Constitution and this Act, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.)

³ On 5 November 2021, the Minister of Justice and Correctional Services Mr R Lamola in his address to the Inaugural Fort Calata Foundation Memorial lecture stated that there would be an inquiry to investigate the suppression of the cases referred by the TRC to the NPA. A retired judge would be appointed to "assist the NDPP to consider whether the conduct of the relevant officials and others outside of the NPA warrants any action in terms of Section 41[1] of the NPA Act.

⁴NPA Presentation to Justice Portfolio Committee on TRC Progress and Developments (dated 25 November 2022)

⁵PMG, Cradock Four matter & Resignation of NPA Investigating Directorate Head: Ministry & NPA briefing (Accessed at <https://pmg.org.za/committee-meeting/34059/>)

⁶ The Cradock Four is a collective name given to Mr Fort Calata, Mr Matthew Goniwe, Mr Sicelo Mhlauuli, and Mr Sparrow Mkhonto. On 27 June 1985, on their way back to Cradock from Port Elizabeth, the four were arrested at a roadblock set by the Security Branch, assaulted, and murdered. The Security Branch members involved in the Cradock Four's arrest and murder appeared before the Amnesty Committee of the Truth and Reconciliation Commission (TRC), but none of them were granted amnesty.



	<p>supervision of Adv Rodney De Kock, Deputy National Director of Public Prosecutions. In addition, Head of the HAWKS, Gen. Lebeya had also recruited dedicated investigators who were deployed in various parts of the country alongside the dedicated prosecutors.</p> <ul style="list-style-type: none"> • In respect of the Cradock Four matter, however, there was still further investigations that had to be done. <p>Following the meeting the Committee resolved to meet on a quarterly basis with the NPA in order to receive regular updates on progress regarding TRC matters.⁷</p>
<p>1 June 2022</p>	<p>The Committee received a further update on progress on TRC matters following the creation of a dedicated capacity to investigate/prosecute these cases at the NPA and the DPCI/HAWKS.⁸</p> <p>Critically, during the meeting, the NPA indicated that:</p> <ul style="list-style-type: none"> ➤ Communication with families would be improved. In response to concerns by the Portfolio Committee about the lack of a victim centred approach to these matters the NPA committed to work closely with the families and the legal representatives.⁹ (<i>Reportedly, the Office of the Deputy National Director of Public Prosecutions (DNDPP), Adv de Kock, issued an internal memorandum in June 2022, directing all dedicated TRC prosecutors to engage actively and directly with family members in respect of their matters.</i>) ➤ A decision would be made on the Craddock Four matter. The NDPP Adv Batohi stated that a prosecutorial decision on the murders of the Cradock four would be made within a month or six weeks' time.¹⁰¹¹ (The Committee should note that despite this commitment from the NDPP there have been no further public reports on whether a prosecutorial decision has been made in the Cradock Four matter. The Committee may be interested to know whether the DPP/dedicated

⁷Media Statement, Justice and Correctional Services Committee wants Quarterly Progress Reports on TRC Matters (dated 8 December 2021)

⁸PMG, TRC prosecutions: NPA Progress Report; Committee Report on Removal of Magistrate (Accessed at <https://pmg.org.za/committee-meeting/35100/>)

⁹Media Statement, Justice and Correctional Services Committee Welcomes Progress on TRC Cases, but urges NPA to communicate more with victims' families (Accessed at https://pmg.org.za/files/220601pcjusticeMedia_Statement.docx)

¹⁰ Ibid

¹¹In June 2022, following the Portfolio Committee meeting Mr Ford Calata's son, Mr Lukhanyo Calata, who has been lobbying for the case to go to court for years welcomed the latest developments. "I think this is probably the closest that we've been to any sort of decision, any sort of justice really for my father and his comrades," he said. Given the extent of the crimes committed by the state during apartheid, which has after all been declared a crime against humanity, it is an indictment that there has not at the very least been resolution of the 300 cases referred for prosecution by the TRC.



	<p>Prosecutors in the Eastern Cape have at least been in communication with the families regarding the status of this matter. <u>In a news report (dated 12 September 2022) it was stated that the NPA has yet to make a decision over whether it will prosecute or not in the deaths of the Cradock 4. Mr Lukhanyo Calata, the son of Fort Mr Calata said there had been no communication from the NPA on whether they would prosecute since Adv Batohi made her commitment. "Six weeks came and went and another six weeks came and went. We still have not heard anything from the NPA." Mr Calata said the failure by the NPA to make a decision was the latest failed commitment from the prosecuting body. "They have not kept their word". "They say one thing and do a completely different thing. It speaks to the lack of respect they have not only for us as the families, but also for the people who died in the Struggle for freedom."</u>¹²</p> <p>➤ Despite a renewed commitment in respect of the TRC cases there was no guarantee of prosecutions. The NPA committed to obtaining justice for all of the relevant families, particularly those without the means to put pressure on prosecution, but stated that the reality was that in many of these cases there would not be a prosecution due to various challenges.¹³</p>
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Subsequent to the meeting with the NPA in June 2022 the Committee may be interested to note the following:¹⁴

2. RE-OPENING INQUESTS

A number of families have fought to re-open inquests into the deaths of family members who died in suspicious circumstances.

- **Reopened Dr Hoosen Haffeejee Inquest:** Dr Haffeejee, a dentist at the King George V Hospital in Asherville, Durban, was detained by Security Branch captains James Taylor and Piet du Toit and several other operatives at about 8am on August 2, 1977. Haffeejee had been under surveillance for several months before his detention. He was found dead in his cell at 4am the next day. The 26-year-old was found hanged with his trousers, from the bars of the police cell where he had been held after hours of

¹²Maqhina M, NPA 'dithering' on prosecuting anti-apartheid activists' deaths (Accessed at <https://www.iol.co.za/capetimes/news/npa-dithering-on-prosecuting-anti-apartheid-activists-deaths-316240c6-0eb7-488c-bd59-b1eacf3a958e>)

¹³ PMG, TRC prosecutions: NPA Progress Report; Committee Report on Removal of Magistrate (Accessed at <https://pmg.org.za/committee-meeting/35100/>)

¹⁴ It may be noted that this paper focuses on matters in the public domain on which information is available, this does not seek to detract from the importance of highlighting all those named in the 300 plus cases referred by the TRC on which there is currently either minimal or no available public information in respect of progress in investigating/prosecuting those matters.



interrogation on 3 August 1977. The re-opened inquest into the death in detention of Dr Haffeejee ran from the 16th of August 2021 until the 17th of September 2021 at the Pietermaritzburg High Court. **The closing arguments in the matter were scheduled for 18 and 19 October 2022.**¹⁵

- **Reopened Inquest into the death in detention of Imam Abdullah Haron.** On 28 May 1969, Imam Haron was detained and charged with terrorism. He was kept in solitary confinement for 123 days and subjected to daily interrogations and likely torture. Imam Haron died while in police custody on 27 September 1969. Despite evidence to the contrary, an initial inquest in 1970 ruled that he had fallen to his death by accident. In 2019, based on new evidence and other grounds, the Haron Family made representations to the NDPP requesting the re-opening of the inquest. In the interim the two persons of material interest to the case, former Security Branch officers, “Spyker” van Wyk and Dirk Genis, had died. On 31 May 2022, almost two and a half years after the family had filed representations with the NDPP, the Minister of Justice and Correctional Services, Mr Ronald Lamola, formally requested the Judge President of the Western Cape Division of the High Court to designate a judge to reopen the inquest into the death in detention of Imam Haron.¹⁶ **The inquest took place from 7 to 18 November 2022 at the Cape Town High Court.**

In addition:

- **Inquests have been opened for:**
 - **Ms Ntombikayise “Ntombi” Khubeka, Mr Musawenkosi “Sbho” Phewa and Mr Zamukwenzani Bright Sokhulu.** During 1986, the Port Natal Security Branch received intelligence information about the operations of these three activists at KwaMashu. The three subsequently disappeared and were believed to have been kidnapped and murdered by the Security Branch. The Director of Public Prosecutions (DPP) in KwaZulu-Natal, after reading the dockets that were submitted by DPCI: KZN TRC Unit in these matters, has decided that formal inquests should be held. Senior State Advocates from the NPA's TRC Unit will be handling the inquest proceedings which are set down for 24 - 28 October 2022 at Umlazi Magistrates' Court.¹⁷
 - **Mr Jameson Ngoloyi Mngomezulu.** He was abducted in 1985 from Swaziland by members of the Jozini Security Branch. He was taken to Jozini where he was subjected to assault, torture and other serious forms of physical and mental ill-treatment. He died in their hand. Certain members of the Security Branch applied and were granted amnesty in respect of his murder whilst others were refused amnesty. Following investigations conducted by the DPCI: KZN TRC-Unit, the DPP has decided that a Formal Inquest be held to deal with the matter. Senior State Advocates from the NPA's TRC Unit will be handling

¹⁵ Foundation for Human Rights (Accessed at <https://unfinishedtrc.co.za/hoosen-haffeejee/>)

¹⁶ The Minister's Decision was in terms of Section 17 A of the Inquest Act no 58 of 1959

¹⁷NPA DPCI joint statement on formal inquests in TRC matters (Accessed at <https://www.politicsweb.co.za/politics/formal-inquests-in-trc-matters--npa--dpci>)



the inquest proceedings which is set down set down for 07 - 11 November 2022 at Pongola Magistrates' Court.¹⁸

3. ONGOING CHALLENGES WITH COURT CASES

A number of families continue to face not only the challenge of long delays in getting these matters to court but then, even when matters do proceed to court, additional obstacles that further hinder their attempts to find some form of justice. For instance:

- **The trial in the matter of the late Ms Nokuthula Simelane.** In September 1983, Umkhonto we Sizwe (MK) operative Nokuthula Simelane was called to a meeting at the Carlton Centre in downtown Johannesburg. She was never seen again. The TRC refused amnesty for torture and murder to the Security Branch officers involved in her disappearance. The family has been fighting for a trial in this matter since 2005. Serious delays in the investigation have meant the family has had to approach the courts on multiple occasions. The NPA cited the SAPS failure to make investigators available, as well as the disappearance of the police docket, as reasons for the delay. In 2010, an investigator was finally appointed, and in 2012 the docket was recovered.¹⁹ The matter was finally brought to trial in 2016 but the case continued to be hamstrung by various delays:
 - Notably, this included a lengthy bid by the accused to get the South African Police Service (SAPS) to cover their legal costs. **On 5 June 2018, Judge Cynthia Pretorius found that the SAPS was following an unfair procedure in refusing to pay legal fees** in the murder trial of Willem Coetzee, Anton Pretorius, and Frederick Mong. The judgment confirmed that the three accused were not on a private frolic of their own, but were part of the apartheid State's apparatus. Judge Pretorius noted that the delay to bring this matter to trial has lasted decades.²⁰ The wait has been long enough and the judgment emphatically states that such untenable delay is unacceptable.²¹
- After almost 40 years, two of those allegedly involved in Ms Simelane's murder have died. **The trial of the two still surviving former Security Branch officers, Willem Coetzee and Anton Pretorius, was supposed to commence in the Pretoria High Court on the 6th of June 2022.** However, the trial had to be postponed after Coetzee contracted COVID-19. Then it was delayed again, this time as a result of Coetzee apparently now suffering from a cognitive condition that has rendered him unable to understand and follow proceedings. **Further tests have to be conducted to establish whether the condition is permanent or not and proceedings were set to resume again in August 2022.**

¹⁸Ibid

¹⁹FHR, The Nokuthula Simelane, COSAS 4 and Caiphus Nyoka matters before courts (Accessed at <https://unfinishedtrc.co.za/press-release-the-nokuthula-simelane-cosas-4-and-caiphus-nyoka-matters-before-courts/>)

²⁰ The Judge noted that this would have been the first prosecution of apartheid era perpetrators since 2007.

²¹Venter Z, Nokuthula Simelane murder: SAPS ordered to pay ex-cops' legal costs (Accessed at <https://www.iol.co.za/news/south-africa/gauteng/nokuthula-simelane-murder-saps-ordered-to-pay-ex-cops-legal-costs-15324964>)



Despite the 2018 judgement in the Simelane matter regarding the payment of legal fees by the SAPS for the accused it appears that a similar challenge is impacting the trial in the matter of the COSAS 4:

- **COSAS's 4 family opposes SAPS's attempt to delay the murder trial.** The four anti-apartheid student activists known as the COSAS 4, (Mr Eustice 'Bimbo' Madikela, Mr Ntshingo Mataboge, Mr Fanyana Nhlapo and Mr Zandisile Musi) were members of the Congress of South African Students (COSAS) who were lured by the Security Branch to a pumphouse near Krugersdorp in 1982. The police had rigged the pumphouse with explosives which they detonated once the four were inside. All were killed except for Mr Musi who was seriously injured. In May 1999, former Security Branch officers Carel Coetzee, Willem Frederick Schoon, Abraham Grobbelaar, Christiaan Siebert Rorich and, Tlhamedi Ephraim Mfalapitsa applied for amnesty at the TRC. They were denied amnesty and the case was referred to the NPA for further investigation and prosecution:
 - In August 2021, Mfalapitsa, and Security Branch explosives expert, Rorich, were charged with kidnapping and murder.
 - In November 2021, charges of crimes against humanity of murder and the **crime against humanity of Apartheid** were added to the indictment. This is the first time that crimes against humanity have been brought in South Africa.
 - On 15 February 2022, Rorich's attorneys informed the court that SAPS had declined to pay the legal costs of Rorich, and that they intended to review this decision.
 - On **4 May 2022, a court judgement directed the SAPS to pay the reasonable legal costs of Rorich.**
 - On **29 September 2022, Ms Maide Selebi, sister of the late Eustice Madikela filed a court application to intervene in the legal proceedings launched as a result of the South African Police Services (SAPS) continued refusal to pay the legal costs of Rorich.**²² (It is unclear why the SAPS did not comply with the May 2022 court ruling. The Minister of Police has subsequently applied for leave to appeal the 4 May 2022 court order, which instructed SAPS to pay Rorich's legal fees. However, the Minister's application was "out of time" as court rules give clear deadlines for filing such applications, in this case the deadline was 25 May 2022. Reportedly, the Minister has applied for condonation of the late filing, however, because the SAPS representatives have missed so many court appearances, they could now face a contempt of court ruling and punitive costs. The Judge remarked during proceedings that in his 25 years on the bench, he had "never been treated so contemptuously".)²³
 - Judgement in respect of the legal costs matter will be delivered in the South Gauteng High Court, by Justice J Mokgoathheng, on 28 November 2022.

²²FHR, COSAS's 4 family opposes SAPS's attempt to delay the murder trial (Accessed at <https://unfinishedtrc.co.za/press-release-cosass-4-family-opposes-sapss-attempt-to-delay-the-murder-trial/>)

²³Forbes D, Judge lashes minister Cele, police and state attorney for Cosas 4 delays (Accessed at <https://www.timeslive.co.za/sunday-times-daily/news/2022-10-11-judge-lashes-minister-cele-police-and-state-attorney-for-cosas-4-delays/>)



4. PROGRESS UPDATE

In the latest presentation to the Committee the NPA presents a more progressive picture of the work being done by both the prosecuting authority and the DPCI/HAWKS:²⁴

- An increase in dedicated capacity (**from 16 to 29 dedicated Prosecutors and from 17 to 40 DPCI investigators**)²⁵
- An improvement in the focus on engagements with families and stakeholders. (According to the presentation forwarded to the Committee by the NPA - families kept up to date and report back received at the National Office monthly and successful engagements facilitated by the National Office with representatives of the Apartheid Era Victims Family Group²⁶ (and the DPP divisions).
- Divisions have self-imposed time frames on matters that they have identified for fast tracking. This is being monitored strictly at the National Office.

4.1 Processing of Matters

The NPA has divided progress in respect of TRC matters into three categories, and has reported to the Committee as follows:

	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	TOTAL
APRIL 2022²⁷	55	13	24	92
NOVEMBER 2022²⁸	94	9	26	129

Comment

- **Processing of cases.** The Committee could note that:²⁹
 - The introduction of a dedicated TRC capacity from the NPA and DPCI has had a positive impact on the processing of cases. This has resulted in an increase, (as from April 2022 to November 2022), of 44 matters in Category A, however, it does

²⁴NPA Presentation to Justice Portfolio Committee on TRC Progress and Developments (dated 25 November 2022)

²⁵Ibid

²⁶Apartheid Era Victims' Families Group (AVFG) Charter (Accessed at <https://www.ahmedtimol.co.za/wp-content/uploads/2020/06/CHARTER-23-06-2020.pdf>)

²⁷ Presentation to Portfolio Committee on Justice and Correctional Services (dated 1 June 2022) Progress on TRC Cases (Accessed at https://static.pmg.org.za/220601FINAL_DRAFT__PC_BRIEFING_ON_TRC_PROSECUTIONS_25_May_2022_P OST_NDPP.pdf)

²⁸NPA Presentation to Justice Portfolio Committee on TRC Progress and Developments (dated 25 November 2022)

²⁹ Ibid



- not** appear that this has been matched by a corresponding increase in the throughput of cases into Categories B and C. There may be various reasons for this situation and the Committee may be interested in more information.
- **Ultimately, according to the data provided by the NPA, only 10 matters have been enrolled and 16 matters finalised (most of which were finalised many years ago).**³⁰ *(Moreover, while respectfully acknowledging, the renewed commitment of the NPA and DPCI regarding the TRC matters as well as the complexities of these investigations, it must be said that in a number of these matters, (for example, S v Rorich and another (COSAS 4), Inquest: Dr HH Haffeejee, S v Coetzee (Simelane), Inquest Imam Abdullah Haron, and Inquest DR NH Aggett), it is really as a result of the determination and perseverance of the families (rather than the work of law enforcement agencies) that these matters have been placed before the courts.)*
 - **Audit.** The NPA has reported that an audit of TRC matters between the DPCI and NPA was key in developing a coordinated and hands-on, standardised approach. Matters were identified for fast-tracking, with consideration given to the seriousness of the evidence, age of the matters, age of the accused/persons of interest/witnesses, availability of experts and witnesses and exhibits/records. The TRC reportedly referred over 300 cases to the prosecution authorities, the NPA reports in its latest presentation on 129 matters currently under investigation. Does this mean the NPA/DPCI has at least 171 further matters to investigate or has a decision been taken that are there some matters identified by the audit that will not be pursued by the law enforcement agencies?
 - **Skills.** According to the NPA “*existing skills were accessorised and upskilled for the benefit of prosecutors and investigators.*”³¹ The Committee could ask for more information on this ‘upskilling’ process.
 - **Legal Representation.** According to the NPA presentation to the Committee the following four enrolled matters have been postponed “**for the outcome of legal representation**”.³² The Committee could ask whether the issue of legal representation relates to requests for assistance from Legal Aid South Africa?³³
 - Ms N Kubheka KZN – Inquest proceeded on 24/10/2022 at Umlazi. Postponed to 30/11/2022 for outcome of legal representation.
 - Mr Sbo Phewa KZN – Inquest proceeded on 24/10/2022 at Umlazi. Postponed to 30/11/ 2022 for outcome of legal representation.
 - Mr Zama Sokhulu KZN – Inquest proceeded on 24/10/2022 at Umlazi. Postponed to 30/11/2022 for outcome of legal representation.

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ SABC News, Umlazi court postpones inquest into 1986 death of three ANC activists (Accessed at <https://www.sabcnews.com/sabcnews/umlazi-court-postpones-inquest-into-1986-death-of-three-anc-activists/>)



- Mr James Mngomezulu KZN – Inquest proceeded on 07/11/ 2022 in Pongola. Matter postponed for outcome of legal representation.
- **Records.** The NPA has continued to highlight a number of challenges affecting the investigation/ prosecution of TRC matters, including the age of matters, the age of witnesses, persons of interest and suspects, the destruction of records including inquest records, no trace of dockets and exhibits. The issue of untraceable dockets is particularly concerning and the Committee may consider the extent to which SAPS should be requested to account for this situation. The Committee could also consider asking: (i) whether the use of dedicated prosecutors and investigators has helped overcome some of these challenges; and (ii) the extent to which the NPA/DPCI are engaging with Universities and other institutions regarding archived materials and records.
- **Appointment of Senior Counsel.** The NPA reports that in addition to enhanced capacity and stakeholder engagement, it 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. The Committee could enquire as to whether such Senior Counsel has been appointed yet and if not what are the timeframes for this appointment. *(In respect of the TRC matters it is clear too much time has already been wasted, therefore, if the appointment of a SC can identify weaknesses and strengthen existing processes then it should surely be done on an urgent basis.)*
- **The charge of crimes against humanity.** In the case of the Cosas 4 the NPA added the charge of a crime against humanity of Apartheid to the indictment. It was reported that in the matter of Mr Caiphus Nyoka, the legal representatives acting for Ms Algeria Nyoka, had filed representations requesting the DPP to include charges under international criminal law i.e. crimes against humanity of murder and apartheid. The judge ordered the postponement of the matter until 23 May 2022, pending the decision of the DPP with respect to the international charges. The Committee may be interested in the decision of the DPP in this matter and the reasons for the decision.

5. SOURCES

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Media Statement, Justice and Correctional Services Committee wants Quarterly Progress Reports on TRC Matters (dated 8 December 2021)

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