

DRAFT MINUTES OF THE PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES

Date: 25 November 2022

Time: 09h30

Venue: Virtual Platform: Zoom

Agenda: Progress report by the National Prosecuting Authority (NPA) on the Truth and Reconciliation Commission (TRC) prosecutions; and deliberations on the Prevention and Combating of Hate Crimes and Hate Speech Bill.

Committee members in attendance

Status	Name of Member	Political Party
Present	Mr. G Magwanishe (Chairperson)	African National Congress
	Ms. NH Maseko-Jele	
	Ms. WS Newhoudt-Druchen	
	Mr. X Nqola	
	Ms. A Ramolobeng	
	Mr. J Engelbrecht	Democratic Alliance
	Mr. S Swart	African Christian Democratic Party
	Ms. Y Yako	Economic Freedom Fighters
	Mr. G Hendricks	Al Jama-ah
Apologies	Mr. QR Dyantyi	African National Congress
	Mr. W Horn	Democratic Alliance
	Adv. G Breytenbach	

Parliamentary support staff

Name of support staff	Designation
Mr. S Mthonjeni	Committee Secretary
Ms. S Goba	Committee Secretary
Ms. C. Silkstone	Content Advisor
Ms. G Nesbitt	Committee Researcher

Office –bearers and officials in attendance

Name of delegate	Institution/Department
Adv. R de Kock	National Prosecuting Authority
Adv. S Singh	
Ms. B Makeke	
Adv. M Mhaga	
Adv. B Madolo	
Adv. N Kanyane	
Adv. N Somaru	
Adv. R Makhari-Sekhaolelo	
Adv. A Chauke	
Ms. S Seema	
Mr. J Jeffery	Ministry of Justice and Constitutional Development
Ms. K Pillay	
Mr. H Du Preez	
Ms. A Botha	
Mr. M Makulubete	
Mr. M Zenzile	

1. Adoption of Agenda

1.1. The Chairperson welcomed all to the meeting, read the agenda and noted apologies.

2. Briefing by the NPA on the TRC Prosecutions

2.1. Mr. R de Kock, the Acting National Director of Public Prosecutions (NDPP), took the Committee through the presentation. The NPA advised the Committee about the plans that have been put in place to ensure that TRC-related cases are prioritised for investigation and prosecution. Working closely with the families of victims forms part of this strategy.

2.2. The presentation can be obtained from the Committee Secretariat on request.

3. Members' comments and questions

- 3.1. The Committee welcomed the progress reported by the NPA, as well as the additional prosecutors and investigators to bring matters to finality. The Committee understands that it is up to the NPA to evaluate evidence and decide on whether or not to prosecute. The Committee is also pleased with the continued engagement with families of victims.
- 3.2. The Committee requested more information on: the work conducted by the Missing Person's Task Team and the processes followed in identifying the remains of victims; resource re-allocation to ensure inquests are opened; how the R1.8 billion reparations funds is to be distributed; the deployment of investigators and prosecutors according to numbers of cases; and the timeframes for the TRC cases.
- 3.3. Some members wanted to know why the NPA obtained an external legal opinion when requested to add a charge of crime against humanity to the charges against those who are accused of crimes committed during apartheid in the Gauteng division. The NPA has received the opinion in October 2022. The Committee asked about the content of the opinion.
- 3.4. Some members proposed that the NPA should seek to ensure that pension funds of those members who were part of the Security Branch during apartheid are withheld.
- 3.5. Some members requested more details concerning the case of Dr Neil Aggett death in detention. The courts have recently found that he did not commit suicide while in Security Branch custody but died at the hands of his captors.
- 3.6. Concern was raised that the longer cases drag on the less chance of obtaining evidence for a successful prosecution.
- 3.7. Members requested information on the progress of the cases concerning Chief Albert Luthuli and Imam Haron.
- 3.8. Some members asked, out of the 129 active cases, how many are new cases and how many are ongoing. Has the NPA been able to trace all those families of the victims? What financial support does the NPA provide to the families? In addition, does the NPA have any way of measuring whether the families are satisfied with the NPA's consultation with them.
- 3.9. The Committee is aware that the Minister committed to establishing an enquiry into the possibility that political influence delayed the prosecution of apartheid crimes. The presentation speaks to a process of appointing Senior Council to assess the work done by the NPA on an ongoing basis. Are these processes separate or are they related?

- 3.10. On the Cradock Four matter, the Committee appreciated that the NPA's provincial offices are meeting with families. But why is the matter delayed when there is already a judgement on the matter. It seems as if the progress comes from court applications and pressure from families. As there has been progress in the matter, the Committee asked if the civil case against the NPA by the families has been suspended for now.
- 3.11. On the Rodrigues matter, members requested clarity concerning the matter of payment for legal representation requested by the former Security Branch official.
- 3.12. Some members proposed that the issue of missing persons needs to be dealt with separately as South Africa still has a lot of missing persons.
- 3.13. Members wanted to know whether it would be possible to have special courts to deal with TRC matters.
- 3.14. The Committee agreed that it should sufficient time early next year to receive a progress report that will also include the work of the Missing Persons Task Team.
- 3.15. The SAPS decision to appeal the judgement on funding Security Branch officials might cause delays, The Committee should also invite SAPS to its next meeting on this issue.
- 3.16. The Committee agreed that the Minister still has to update the Committee on the progress in establishing the proposed enquiry and also on plans to distribute the reparations funds.
- 3.17. The Committee commended the NPA and HAWKS for the work done so far. As these matters can take their toll on the well-being of investigators and prosecutors, they should have access to psychological assistance to ensure their well-being.
- 3.18. A written response will be sent to the committee, including the number of families contacted; the process followed in appointing Senior Council to review the progress of the cases while ensuring the NPA's independence; and the external legal opinion on the decision to add charges of crime against humanity.
4. **Presentation by the Department of Justice and Constitutional Development of the research documents on the Prevention and Combating of Hate Crimes and Hate Speech Bill**

4.1. Mr J Jeffery, the Deputy Minister, and officials from the Department of Justice and Constitutional Development, took the Committee through the Department's research document on the Prevention and Combating of Hate Crimes and Hate Speech Bill and drafting proposals.

4.2. The written documents are available from the Committee Secretary on request.

5. **Members' comments and questions:**

5.1. **Definition of 'communication':** members wanted to know whether utterances are also covered in the definition, as an utterance can be a single word and is not necessarily a statement.

5.2. **Definition of 'electronic communication':** Does the proposal include social media? The Department indicated that there is no single definition of social media but that it is covered in the definition of data message. The Department was requested to look at German legislation in this regard.

5.3. **The definition of 'harm':** members requested further clarity on the inclusion of social and cultural harm as these broaden the definition far beyond the Qwelane judgement. The Department indicated there is no definitive definition in the Qwelane judgement because it is focusing on civil remedies. Members agreed to the adjective substantial in the definition.

6. **Closing remarks**

6.1. The Committee received a legal opinion on the Cannabis for Private Purposes Bill concerning procedural issues. These would need to be discussed before the Committee can proceed with its deliberations on the Bill.

6.2. The Committee would then meet on Tuesday, 29 November 2022, and Wednesday, 30 November 2022, to deliberate further on the Prevention and Combating of Hate Crimes and Hate Speech Bill.

7. **Adjournment**

7.1. The meeting ended at 13h40.

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Mr. G Magwanishe

PC on Justice and Correctional Services

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Date